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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 132.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF TODD, IN THE STATE OF MINNESOTA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED SEPTEMBER 29, 1888.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 8, 1891.

1 STATE OF MINNESOTA, } ss:
Office of Clerk of Supreme Court, }

I, J. D. Jones, clerk of the supreme court of the State of Minnesota, do hereby certify that the attached papers, viz., certificate to supreme court, answer of defendant and appellant, findings of fact and conclusions of law of district court, memorandum of district court, opinion of supreme court of State of Minnesota, minutes of argument in supreme court, order for judgment in supreme court, judgment of supreme court, notice of appeal to supreme court, with proof of service thereon; final judgment in district court, from which appeal is taken; order affirming judgment of district court, and final judgment of supreme court, and the bond on appeal to U. S. Supreme Court, are true copies of the originals remaining on file and of record in my office, and that I have carefully compared said copies with said original files and records, and that the same are true and correct transcripts therefrom and thereof and all thereof, and that together with the writ of error in said cause and the citation
2 therein herewith returned and attached they form and are returned as an answer and return to said writ of error and in obedience to the command therein contained.

Witness my hand and the seal of said court this 11th day of September, 1888.

[Seal of the Supreme Court, State of Minnesota.]

J. D. JONES,
Clerk of Supreme Court, State of Minnesota.

To the hon. Supreme Court of the United States.

3 (1.)

STATE OF MINNESOTA, }
County of Todd. }

District Court, Seventh Judicial District.

In the matter of proceedings to enforce payment of the taxes on real estate remaining delinquent on the first Monday in January, 1886, for the county of Todd, State of Minnesota.

To the supreme court of the State of Minnesota:

The district court having sustained the taxes sought to be enforced in these proceedings against the lands hereinafter described and The St. Paul, Minneapolis & Manitoba Railway Company, defendants herein, having made application for leave to present its objections to said taxes to the supreme court—

And it appearing to said district court that the points raised by defendants' answer are of great public importance and likely to arise frequently, therefore the district court makes the following statements of facts established bearing upon points raised and its decision in the case for the information of the supreme court on the hearing of

said objections. A list of taxes on real estate delinquent on the first Monday of January, 1886, for said county of Todd was duly filed in the office of the clerk of said district court for said county of Todd, in which list the several parcels of land hereinafter men-
4 tioned and described appear, with the taxes levied and assessed against the same for the year 1884, to which levy and assessment the St. Paul, Minneapolis & Manitoba Railway Company appears and files its answer and objections, which is as follows:

(2.)

STATE OF MINNESOTA, }
County of Todd. }

District Court, Seventh Judicial District.

In the matter of the proceedings to enforce payment of the taxes on real estate remaining delinquent on the first Monday in January, 1886, for the county of Todd, State of Minnesota.

The St. Paul, Minneapolis & Manitoba Railway Company, which is a corporation for railway purposes duly organized under title 1 of chapter 34 of the General Statutes and the acts amendatory thereof, and especially an act entitled "An act to amend title 1 of chapter 34 of the General Statutes relating to corporations," being chapter 30 of the General Laws of 1876, and which is and at all times since June, 1879, has been and now is the owner and in possession of and engaged in operating all the lines of railroad hereinafter mentioned, for its answer and objection and defense to the taxes sought to be enforced against each and every of the parcels of land which, with the names of the owners thereof, are described and stated in the list of delinquent taxes filed and published in the above-entitled proceedings as follows:

5 *Description of Lands.*

Name of owner.	Description of lands.	Section.	Town.	R'ge.
St. Paul, Minneapolis & Manitoba Railway Company.	Town of Eagle Valley—			
	N. ½ N. E. ¼ & S. E. ¼	4	131	34
	S. W. ¼ S. E. ¼ & S. W. ¼ N. W. ¼	5	131	34
	S. W. ¼	5	131	34
	S. E. ¼ N. E. ¼ & E. ½ S. E. ¼	6	131	34
	S. ½	7	131	34
	W. ½ N. E. ¼ & W. ½ S. E. ¼	8	131	34
	W. ½	8	131	34
	S. W. ¼ N. W. ¼, N. E. ¼ S. W. ¼, & W. ½ S. W. ¼	10	131	34
	N. E. ¼	11	131	34
	N. E. ¼ S. E. ¼ & W. ½ S. E. ¼	11	131	34

Description of Lands—(Continued.)

Name of owner.	Description of lands.	Section.	Town.	R'ge.
St. Paul, Minneapolis & Manitoba Railway Company.	S. ½ N. W. ¼ & N. ½ S. W. ¼	12	131	34
	S. E. ¼ N. E. ¼ & W. ½ N. E. ¼	14	131	34
	N. W. ¼	14	131	34
	S. W. ¼	15	131	34
	S. E. ¼ N. E. ¼ & W. ½ N. E. ¼	17	131	34
	N. W. ¼	18	131	34
	S. E. ¼ S. W. ¼	18	131	34
	N. ½	19	131	34
	S. E. ¼	19	131	34
	S. W. ¼ S. E. ¼	20	131	34
	N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	20	131	34
	W. ½ N. W. ¼	20	131	34
	W. ½ N. E. ¼	21	131	34
	N. W. ¼	21	131	34
	E. ½ N. E. ¼ & N. W. ¼ N. E. ¼	22	131	34
	S. W. ¼ N. E. ¼ & N. W. ¼ S. E. ¼	22	131	34
	N. E. ¼ S. E. ¼	22	131	34
	W. ½	23	131	34
	S. E. ¼ S. E. ¼	24	131	34
	E. ½ N. E. ¼ & N. W. ¼ N. E. ¼	25	131	34
	E. ½ S. E. ¼, N. W. ¼ S. E. ¼, & N. E. ¼ S. W. ¼	25		
	S. E. ¼ S. W. ¼ & S. ½ N. E. ¼, S. W. ¼	27	131	34
	N. W. ¼ S. W. ¼, less 1½ acre	27		
	W. ½ S. W. ¼	28		
	S. ½ N. E. ¼	29		
6	N. W. ¼ N. E. ¼ & N. W. ¼	29		
	S. E. ¼	29		
	E. ½ N. E. ¼ & N. W. ¼ N. E. ¼	30		
	N. E. ¼ N. E. ¼	31		
	N. E. ¼ & N. ½ S. E. ¼	32		
	All of	33		
	N. E. ¼ & S. E. ¼	34		
	W. ½ N. W. ¼	34		
	S. ½ N. E. ¼ & S. E. ¼ N. W. ¼	35		
	S. W. ¼ S. E. ¼ & E. ½ S. W. ¼	35		
	N. E. ¼ N. W. ¼	35		
	Town of Wykeham—			
	N. E. ¼, W. ½ S. E. ¼, & E. ½ S. W. ¼	1	131	35
	N. E. ¼	2		
	S. W. ¼	2		
	N. W. ¼	3		
	N. ½	4		

Description of Lands—(Continued.)

Name of owner.	Description of lands.	Section.	Town.	R'ge.
St. Paul, Minneapolis & Manitoba Railway Company.	E. ½ & N. W ¼ (but this answer is not interposed to the S. E. ¼)	5		
	E. ½ N. E. ¼ & S. W. ¼ N. E. ¼	10		
	W. ½ S. E. ¼, E. ½ S. W. ¼, & S. W. ¼ S. W. ¼	10		
	N. ½	11		
	N. ½ N. E ¼, S. W. ¼, & N. W. ¼ S. W. ¼	12		
	E. ½ S. E. ¼ & N. W. ¼ S. E. ¼	12	131	35
	E. ½ S. W. ¼ & S. W. ¼ S. W. ¼	13	131	35
	N. ½	14	131	35
	S. W. ¼	14	131	35
	N. ½	21	131	35
	N. W. ¼ S. E. ¼, N. ½ S. W. ¼, & S. W. ¼ S. W. ¼	21	131	35
	E. ½	22	131	35
	S. W. ¼	22	131	35
	W. ½ S. E. ¼, N. W. ¼, & E. ½ S. W. ¼	23	131	35
	N. E. ¼ & E. ½ N. W. ¼	24	131	35
7	N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	24	131	35
	E. ½ N. E. ¼, N. W. ¼ N. E. ¼, & N. E. ¼ S. E. ¼	26	131	35
	S. E. ¼ N. W. ¼ & W. ½ N. W. ¼	26	131	35
	N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	26	131	35
	N. ½ N. E. ¼, E. ½ N. W. ¼, & S. W. ¼ N. W. ¼	27	131	35
	S. W. ¼	27	131	35
	W. ½ N. E. ¼ & N. ½ S. E. ¼	28	131	35
	E. ½	34	131	35
	N. E. ¼ & N. ½ N. W. ¼	35	131	35
	(But this answer is not interposed as to the N. ½ N. E. ¼ or the N. E. ¼ N. E. ¼ of said section 35) S. W. ¼ N. W. ¼	35	131	35

Respondent further alleges as follows:

That by purchase thereof at mortgage foreclosure sales in May and June, 1879, this respondent became and still is the owner in fee of all that part of the lines of the Minnesota & Pacific Railroad Company and the St. Paul & Pacific Railroad Company and the first division of the St. Paul & Pacific Railroad Company, extending from St. Paul, in the county of Ramsey, to St. Vincent, in the county of Kittson, in this State, and formerly known as the main and branch lines of said Minnesota & Pacific Railroad Company

and St. Paul & Pacific Railroad Company, and of all the property, rights, franchises, immunities, exemptions, and privileges at any time possessed by said companies or either of them, including
8 the exemption from ordinary taxation hereinafter mentioned pertaining to said line of railroad; which said purchase by this respondent and its right and title to all said line of railroad, property, rights, franchises, immunities, exemptions, and privileges were fully confirmed to this respondent by an act of the legislature of this State, approved March 7, 1881, entitled "An act confirming the organization and certain purchases of the St. Paul, Minneapolis & Manitoba Railway Company and in relation to the charter, powers, franchises, and property of said company."

That the said Minnesota & Pacific Railroad Company was created a corporation by an act of the Legislative Assembly of the Territory of Minnesota, approved May 22, 1857, entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in that State,' and granting certain lands to railroad companies therein named," and by the same act the said company was empowered to construct the lines of railroad named therein, of which lines the said main and branch lines and the St. Vincent extension line of the St. Paul & Pacific Railroad Company has always been a portion; and by said act of May 12, 1857, there was granted to said Minnesota & Pacific Railroad Company all the interest of the Territory and State of Minnesota in the lands granted to said Territory to aid in the construction of said lines by the act of Congress mentioned in the title
9 of said act, which act of Congress was approved March 3, 1857.

That in and by said act of May 22, 1857, it was provided (in the eighteenth section thereof) as follows in regard to said Minnesota & Pacific Railroad Company:

"The said company shall and will, on or before the first day of March in each year, pay into the treasury of the Territory or future State three per centum of the gross earnings of the said railroad for the year ending on the last day of the preceding December, in lieu of *of* all taxes and assessments whatever."

And in and by said section it was further provided as follows:

"And for securing to the Territory or State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroads of the said company and upon all other property, estate, and effects of the said company, whether real, personal, or mixed; and the lien hereby secured shall take and have precedence of all demands, decrees, and judgments against the said company."

And in and by said section it was further provided as follows:

"And in consideration of such annual payments the said company shall be forever exempt from all assessments and taxes whatever by the Territory, or State which shall succeed the Territory, or

by any county, city, town, village, or other municipal authority in the Territory or State, upon all stock in the said Minnesota & Pacific Railroad Company, whether belonging to said company or to individuals, and upon all its franchises or estate, real,
10 personal, or mixed, held by said company, and said land granted by said act of Congress hereby authorized to be conveyed to the said Minnesota & Pacific Railroad Company shall be exempt from all taxation till sold and conveyed by said company."

That thereafter all and singular the rights, privileges, franchises, lands, property, and interests of said Minnesota & Pacific Railroad Company became and were vested in the State of Minnesota, and were, by a public law of the State entitled "An act to facilitate the construction of the Minnesota & Pacific railroad, and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, regranted by said State to the said St. Paul & Pacific Railroad Company.

That in the year 1864, by proceedings duly had pursuant to the provisions of a public law of this State entitled "An act to amend the charter of the St. Paul & Pacific Railroad Company," approved February 6, 1864, the said First division of the St. Paul & Pacific Railroad Company was duly organized as a corporation, and became the owner of the said main and branch lines and of all the property, rights, franchises, immunities, and exemptions of said Minnesota & Pacific Railroad Company and said St. Paul & Pacific Railroad Company in any way relating to said lines; which said organization of said First division of the St. Paul & Pacific Railroad Company and its title to said lines of railroads, lands, franchises, immunities, and exemptions were duly confirmed in said First division of the St. Paul & Pacific Railroad Company by a public law of this State, approved February 6, 1866, entitled "An act to legalize and confirm the organization, acts, and proceedings of the First division of
11 the St. Paul & Pacific Railroad Company, and in relation to the character and powers of said company."

That the said companies and this respondent have at all times fully complied with all the provisions of law in respect to returns of gross earnings and payment of a tax of three per centum thereon in lieu of all other taxes, and in respect to reports of lands sold or contracted to be sold and forfeited contracts.

That the said parcels of land and each of them as to which this answer is interposed were purchased by and conveyed to this respondent long prior to the assessment or levy of any of the taxes of this proceeding sought to be enforced, and ever since such conveyance all said lands have been and now are owned in fee by this respondent, and that said lands were and each parcel thereof was purchased and ever since said purchase have been and now is held and used by this respondent for railway purposes and for the maintenance of its lines of railway, and that the same are necessarily so held and used for such purposes by this respondent.

Wherefore this respondent says that said parcels of land are and each of them is exempt from the taxes in this proceeding sought to

be enforced against the same respectively, and prays judgment that said parcels of land and each of them be wholly discharged from said taxes.

R. B. GALUSHA &
YOUNG & LIGHTNER,
Attorneys for St. Paul, Minneapolis & Manitoba Railway Company, Respondent, St. Paul, Minn.
S. L. CAMPBELL, *Of Counsel.*

12 STATE OF MINNESOTA, }
County of Ramsey. }

Edward Sawyer, being duly sworn, says that he is secretary of The St. Paul, Minneapolis & Manitoba Railway Company, the above-named respondent, and that the foregoing answer is true of his own knowledge, except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

E. SAWYER.

Subscribed and sworn to this 13th day of March, A. D. 1886, before me—

HENRY KROGSTAD,
[SEAL.] *Notary Public, Ramsey Co., Minn.*

The issues raised by the answer in these proceedings came on for hearing before the court on the 6th day of June, 1887, at Long Prairie, in the county of Todd, and after hearing the evidence and the argument of counsel, and said court having taken time to consider the case, the court filed its decision as follows:

STATE OF MINNESOTA, }
County of Todd. }

District Court, Seventh Judicial District.

(3.)

In the matter of proceedings to enforce payment of taxes, etc.

TODD CO.
vs.
THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY. }

13 The above-entitled action came on for trial in the above-named court before the Hons. L. W. Collins and L. L. Baxter, judges thereof, at Long Prairie, in the above-named county of Todd, on the 6th day of June, 1887, E. B. Wood and M. E. Clapp, attorney general, appearing as attorneys for Todd county, and M. D. Grover for the defendants; and from the testimony introduced at the trial and the stipulation of the parties as to the facts in the action, after argument by counsel for the respective parties, we made and filed the following findings of facts and conclusions of law:

Findings of Fact.

I. That the defendant is a corporation duly organized under an act entitled "An act to amend title 1 of chapter 34 of the general statutes of Minnesota relating to corporations, being chapter 30 of the General Laws of 1878, and the acts amendatory thereof," and that the said railway company now is and at all times since June, 1879, has been the owner and in possession of and engaged in operating the lines of railroad hereinafter mentioned.

II. That the said company owns in fee, and did prior to the levy and assessment of the taxes covered by this proceeding, the several tracts of land and each and all of them set up and described in the defendant's answer, and that said lands are no part of the congressional land grants to the State of Minnesota, but were purchased during the year 1882 from private parties by J. J. Hill and by him deeded to defendant during the year 1882, and have been held and owned by the defendant in fee from the date of said purchase.

III. That the Minnesota & Pacific Railroad Company was
14 created a corporation by an act of the Legislative Assembly of the Territory of Minnesota, approved May 22, 1857, entitled "An act of Congress to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State,' and granting certain lands to railroad companies therein named."

IV. That by said act of May 22, 1857, it was provided (in the eighteenth section thereof) as follows in regard to said Minnesota & Pacific Railroad Company: "The said company shall and will, on or before the 1st day of March in each year, pay into the treasury of the Territory or future State three per centum of the gross earnings of said railroad company for the year ending on the last day of the preceding December, in lieu of all taxes and assessments whatsoever;" and in and by said section it was further provided as follows: "And for securing to the Territory or State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroads of said company and upon all other property, estate, and effects of said company, whether real, personal, or mixed; and the lien hereby secured shall take and have precedence of all demands, decrees, and judgments against said company." That in and by said section it was further provided as follows: "And in consideration of the said annual payments the said company shall be forever exempt from all taxes and assessments
15 whatever by the Territory or State which shall succeed the Territory, or by any county, town, city, village, or other municipal organization in the Territory or State; and all stocks of the Minnesota & Pacific Railroad Company, whether belonging to said company or individuals, and upon all franchises or estate, real, personal, or mixed, held by said company, and said

lands granted by said act of Congress hereby authorized to be conveyed to the said Minnesota & Pacific Railroad Company shall be exempt from all taxation until sold and conveyed by said company." And by said act of May 22, 1857, there was granted to the said Minnesota & Pacific Railroad Company all of the interests of the Territory and State of Minnesota in the lands granted to said Territory to aid in the construction of said lines of railroad by the act of Congress mentioned in the title of said act, and which act of Congress was approved March 3, 1857.

V. That hereafter all and singular the rights, privileges, franchises, lands, property, and interests of said Minnesota & Pacific Railroad Company became and were vested in the State of Minnesota, and were, by a public law of said State of Minnesota entitled "An act to facilitate the construction of the Minnesota & Pacific Railroad Company, and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, granted by said State to the St. Paul & Pacific Railroad Company.

VI. That by purchase thereof at mortgage foreclosure sales in May and June, 1879, the defendant became and still is the owner in fee of all that part of the lines of railroad of the Minnesota & Pacific Railroad Company extending from St. Paul, in the county
16 of Ramsey, to St. Vincent, in the county of Kittson, in said State of Minnesota, and of the land granted to aid in the construction of the said St. Vincent extension, in all respects as alleged in the defendant's answer in this proceeding, and of all the property, rights, franchises, immunities, exemptions, and privileges at any time possessed by said companies or either of them, including the exemption from ordinary taxation hereinbefore mentioned pertaining to said companies' lines of railroad and granted lands, which said purchase by said defendant, and its right and title to all of said lines of railroad, property, rights, franchises, immunities, exemptions, and privileges, were fully confirmed to said defendant in all respects as alleged in said answer.

VII. That the said defendant accepted the provisions of said act relating to taxation, and thereby the same became and ever has been obligatory upon the State and the said companies, as alleged in said answer; and that the said land law and the contract therein expressed has never been altered, repealed, or rescinded, but still remains in full force; and that the said companies and the said defendant have always complied with the provisions thereof on their part, as alleged in said answer.

VIII. That the said lands, as to which said answer is herein interposed, are the same lands which are particularly described in said answer, and were all purchased by said defendant on account of their being valuable timber lands, as alleged in said answer, and said defendant has proceeded with due diligence to convert the timber growing on said land into bridges and tie timber for the use of its road as therein alleged.

17 IX. That the taxes to enforce the payment of which this action is brought remain delinquent and unpaid.

Conclusions of Law.

I. That the lands described in the answer in this proceeding are not exempt from taxation, but are subject to the taxes levied and assessed thereon and are now delinquent and unpaid, and to enforce the collection of which this proceeding was brought.

II. That the plaintiff is entitled to judgment against the defendant, as provided by law, for the collection of such taxes and the interest and penalties thereon, together with the costs of this proceeding; and judgment is hereby ordered accordingly.

Dated August 30, 1887.

L. W. COLLINS,
L. L. BAXTER,
Judges.

(4.)

Memoranda.

The defendant claims that under the provisions of its charter all of its property of every kind and description is exempt from taxation except the payment of a certain per centum of its gross earnings, which it is in said charter provided shall be received by the State in lieu of all other taxation.

The charter referred to provides that the defendant com-
18 pany shall pay annually to the State three per centum of its gross earnings, and that in consideration of such payment it shall be forever exempt from all taxes and assessments upon its stocks, upon its lands received from the General Government to aid in the construction of its roads, and upon all its franchises or estate, real, personal or mixed, held by said company. The language of this statute will not bear the construction which the defendant asks to have placed upon it, when considered in connection with the subject to which it relates. The defendant's counsel in his argument correctly says that in considering a statute or contract the court should, for the purpose of construction, place itself in the position of the party at the time the contract was made or the statute enacted, and to give it a construction in the light of surrounding circumstances.

Under what circumstances was this s-atute enacted—this contract entered into? The Minnesota & Pacific Railroad Company, under the charter of which the defendant claims all of its rights, privileges, and exemptions, was in 1857 (at the time of the enactment of the statute referred to) the owner of stocks, and prospectively of lands granted by the General Government to aid in the construction of its roads; and this property, together with its franchises granted by the statute, was all the defendant had at the time named; and it was in the light of these surrounding circumstances that the legislature said to the railroad company that in consideration of the payment by it of three per centum of its gross earnings the State would exempt it from all other taxation upon its stocks, upon the

land granted by the Government, and upon its franchises and estate, real and personal, held by it. What estate was there here referred to and intended by the legislature to be exempt? Was it such property, real and personal, as the company must necessarily possess itself of to enable it to build and operate its road, or such as it might see fit to acquire for its convenience simply and for its speculative purposes? The answer to that question seems to us plain. The very language of the statute shows that only such property as was necessary for the company to enable it to build and operate its road was intended to be exempt from the operation of the general tax law. If the legislature had intended what the defendant claims, then certainly it would not have specially provided for the exemption from taxation of its stocks and the land granted to it as aforesaid; for, if it was intended by said statute to exempt all of the property of the company—real, personal, and mixed—from taxation, it would be superfluous to mention any particular part of it, as was done in this case. The defendant claims that because the land was purchased by the company for the timber thereon fit for ties and railroad purposes that therefore the land is exempt from taxation. We are unable to see upon what principle this claim is made. The land in question was, when purchased by the defendant, covered with timber, which made it profitable for the defendant to purchase it. The company could thus get timber for railroad purposes cheaper than in any other way (there is no claim that it could not have been otherwise and elsewhere obtained); therefore the land, while in the hands of the defendant, should be exempt. This is really the position of the defendant, and if it is a correct one, then, so long as the defendant sees fit to leave such timber or any part thereof standing and growing upon said land, it will be exempt from taxation. It seems to us, therefore, that said lands are taxable, and that only such property, real and personal, as the defendant may acquire for permanent railroad use, and which is necessary to enable it to construct, maintain, and operate its road, is exempt from taxation under the provisions of the statute upon which the defendant bases *his* right to exemption in this case. Any other rule would enable the defendant to secure unlimited quantities of timber land in any part of the State, however distant from the line of its road, and hold it for speculative purposes. The legislature never intended to give the railroad company such great and exclusive privileges, and there is nothing in the statute referred to to show any such purpose. No property of the defendant is absolutely exempt from taxation except the land acquired from the Government, but the effect of the statute is to tax certain railroad property in a manner different from that in which other property in the State is taxed—that is, by requiring the payment annually of three per cent. of the gross earnings of the property executed and exempted from taxation under the general laws of the State; and this property is such only as is used for necessary railroad purposes—not property held, as in this case, for commerce and speculative purposes. No return of the earnings or profits arising from the use or sale of the lands in ques-

tion is made or by law required to be made by the railroad company, and such earnings, therefore—unless such land is taxable under the general laws of the State it remains absolutely
21 free from taxation in every shape so long as the company sees fit to hold it for ties and timber; even a territorial legislature should not be charged with any such intentional injustice to the tax-payers of the State.

L. L. BAXTER.
L. W. COLLINS.

Witness my hand this twenty-seventh-day of September, 1887.
L. W. COLLINS, *Judge.*

22 (5.)

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1887.

THE COUNTY OF TODD, Respondent,
vs.
THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, Appellant. } Syllabus.

The charter of a railroad corporation provided for the payment to the State of a stated percentage of its gross earnings in lieu of all taxes and assessments, and that in consideration of such payment the company should be forever exempt from all assessments and taxes whatever upon its stock, franchises, or estate, real, personal, or mixed:

Held, That such exemption was not applicable to large tracts of timber land purchased by the corporation from which to take timber to be converted into ties and lumber for the use of the corporation.

23 STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1887.

THE COUNTY OF TODD, Respondent,
vs.
THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, Appellant. } Opinion.

This railway corporation in 1882 purchased 35,000 acres of land in Todd county, which, excepting an inconsiderable portion, was timbered land. The question to be determined is as to whether these lands are exempt from ordinary taxation.

The lands were purchased on account of their being valuable timber lands. Since 1885 the corporation has been engaged in cutting the timber and converting it into boards, planks, ties, and lumber of all kinds. The greater part of this has been used in constructing and repairing the railroad of this corporation in this State; the remainder (about one-third) has been used for a like

purpose upon that part of the road which is in the Territory of Dakota. In some places, where the timber has been cut, grass has grown up, a small quantity of which has been sold. Upon a part of one tract a town site had been platted before this land was purchased by the corporation, and a part of the lots are now owned by it.

This corporation became the owner of a part of the line of the Minnesota and Pacific Railroad Company, and as to its line of road succeeded to the rights, franchises, and immunities of that company, including its exemption from ordinary taxation. As to this no question is raised, nor that the charter of the Minnesota and Pacific Company is to be referred to as defining the exemption to which the St. Paul, Minneapolis and Manitoba Company is entitled.

By section 1 of this charter (ch. 1, L. 1857, extra session)
24 corporate powers were granted including the right to acquire, by purchase or otherwise, and to hold, convey, sell, and lease property and estate, either real or personal or mixed. Section 2 empowered the corporation to locate, construct, and operate a railroad. Section 3 authorized the appropriation, by virtue of the right of eminent domain, of a belt of land not exceeding two hundred feet in width throughout the entire length of the road and to take property even beyond that limit for certain necessary purposes. Section 16 regranted to the corporation the lands granted to the Territory by act of Congress. Section 18 provided for the annual payment to the State of three per cent. of the gross earnings of the railroad "in lieu of all taxes and assessments whatever," and that "in consideration of such annual payments the said company shall be forever exempt from all assessments and taxes whatever * * * upon all stock in the said Minnesota and Pacific Railroad Company, whether belonging to said company or to individuals, and upon all its franchises or estate, real, personal, or mixed, held by said company, and said land granted by said act of Congress * * * shall be exempt from all taxation till sold and conveyed by said company." Section 20 declared that the company should be "capable in law of taking and holding any lands granted by the Government of the United States or of this Territory or of the future State or by other parties which shall be conveyed to it by this act or by deed, gift, or purchase or by operation of law, and may mortgage, pledge, sell, and convey the same. * * *"

It is a familiar rule, declared and applied in almost all of the cases involving questions like that under consideration, that "statutes imposing restrictions upon the taxing power of a State, except so far as they tend to secure uniformity and equality
25 of assessment, are to be strictly construed." This is the language of the Supreme Court of the United States in Bank *v.* Tennessee, hereafter referred to (104 U. S. 493).

In County of Ramsey *vs.* Chicago, Milwaukee & St. Paul R'y Co., 33 Minn., 537, we had occasion to construe a similar statute. A statutory exemption of "the railroad, its appurtenances and appendages, and all other property, estate, and effects of said corporation held or used for, in, or about the construction, equipment, renewal,

repairing, maintaining, or operating its railroad, including the lands granted to said company to aid in the construction of said railroad, as also the stock and capital of said company," was considered applicable only to such lands (apart from the land grant) as were held and appropriated to the proper purposes of the corporation in its business of constructing and operating a railroad. It has been considered that the purpose of such statutes has been not to exempt property from taxation, but to provide a substituted method of securing to the State its proper revenue from the taxable property of these corporations. City of St. Paul *vs.* St. Paul & Sioux City R. Co., 23 Minn., 469; County of Hennepin *vs.* St. Paul, Minneapolis & Manitoba R'y Co., 33 Minn., 534, 535; Ramsey County *vs.* Chicago, M. & St. P. R'y Co., *supra.*, and the exemption of taxable property from direct taxation is based upon the assumption that such property will be held and used for the purposes for which the corporation was created, and through such use yield to the corporation an income and to the State a percentage of the same in lieu of direct taxation. We think that the decision in the case last cited and the reasoning upon which it is based are applicable here to exclude the land in question from the operation of the exemption clause above recited.

The language of the statute, it is true, is sufficiently compre-
26 hensive to include all property, for whatever purpose it may have been acquired and held, but that it is to be read and construed in view of the purposes for which the corporation was created. This was the construction and operating of a railroad, and the whole act relates to this purpose. As to the land grant which was conferred upon the corporation to aid in the construction of the road, its privileges were peculiar. It was not expected that the great body of such lands would be occupied or used directly for railroad construction or railroad business, and the purposes for which the grant was made contemplated that the same might be held and disposed of for speculation and gain, and as to such land the exemption was specially and particularly declared. But apart from the special purposes for which this grant of lands was made and the special provisions relating to it there is nothing in the charter extending the general scope of the powers of this company beyond the bounds which ordinarily limit the power and privileges of railroad corporations. Although it might be for the profit and benefit of the company to purchase land merely for speculation or to engage in manufacturing for profit or in banking, it was not empowered to engage in such enterprises, and if it were to acquire and use land for such purposes such property would not be employed in the manner contemplated by the statute in question and would not come within the exemption there declared.

No very precise rule can be laid down by which it can be determined in all cases whether land acquired for railroad purposes is or is not within such an exemption. The mere fact that it was acquired and used for purposes connected with the road would not necessarily determine its exemption. Many branches of industry might be made serviceable in connection with the operations of a

railroad and property to be devoted to various uses which
27 could hardly be supposed to have been contemplated when the corporation was created as being within the scope of its powers. Such might be the case with respect to the purchase and working of iron mines, forges, and rolling mills; the erecting of residences for the use of its officers and employees under ordinary circumstances; the building up of towns along the route to affect the location of centers of population and business, and thus to promote the business and the interests of the company. Even though the State were not to interfere with a corporation engaged in such enterprises, the property thus invested and used would not be within the purpose or the scope of this statutory exemption. Neither, on the other hand, should the operations of the corporation be limited to those things which, in the strictest sense of the word, are necessary for the bare construction and operation of a railroad. In the absence of peculiar language controlling the effect of a charter such corporation is impliedly authorized to prosecute its business in the usual and ordinary way in which such common enterprises are carried on. They may do that which is reasonably necessary for the accomplishment of the authorized undertaking, but it is not contemplated that extraordinary and unusual powers shall be exercised.

The purchase of the lands in question could not, we think, be deemed, in any proper sense of the word, necessary for the prosecution of this enterprise, nor was it such an ordinary appropriation of property to the purposes of the railroad as to come within the reason and scope of the exemption. Such a purchase and use is no more within the contemplated means of accomplishing the purposes of the incorporation and no more properly incident thereto than would be the purchase of an iron mine and the erection and operation of works for converting the ore into iron, rails, and
28 machinery. If there is any limit to the exemption—and as to this there can be no question under the authorities—this property was unquestionably, in our opinion, beyond the scope of the exemption. It may be stated as a general proposition that such real estate of a corporation as is not itself devoted to use for railroad purposes is not within such exemption, even though the product of the road be so used. Whether any real property which the corporation could not acquire by condemnation under the law of eminent domain (and it could not have so acquired this land) would be exempt from ordinary taxation we need not decide.

In addition to authorities cited in County of Ramsey *vs.* C., M. & St. P. R'y Co., *supra*, we refer to some others going to sustain the view we have taken of this case.

In the matter of Swigert, 119 Ill., 83, the supreme court of that State lately considered the question of the taxability for other than State purposes of a grain elevator built upon the lands of a railroad corporation and owned by it, but leased to other parties. The elevator facilitated the operations of the railroad in the shipment of grain. The charter of the company exempted from taxation certain granted lands, and also for a period of six years the "stock, property, and effects of the company," and thereafter "the stock, prop-

erty, and assets" belonging to the company were to be taxed, to a limited extent, for State purposes. The corporation was "exempted from all taxation of every kind except as herein provided for." It was considered that although the language of the statute was sufficient to include the property in question within the exemption, yet that it was not the purpose of the legislature to exempt such property so held, it being not necessary for the construction and operation of the road.

29 See als- Ill. Cent. R. R. Co. *v.* Irvin, 72 Ill., 452.

In Bank *v.* Tennessee, 104 U. S., 493, a banking corporation was empowered to purchase and hold a lot of ground for the use of the institution as a place of business, and at pleasure sell and exchange the same, and may hold such real or personal property and estate as may be conveyed to it to secure debts due the institution, and may sell and convey the same. The charter further declared that the institution should "pay to the State an annual tax of one-half of one per cent. on each share of capital stock, which shall be in lieu of all other taxes." The bank purchased with a portion of its capital stock a lot with a building upon it, a part of which building the bank occupied, and it leased the remainder. As security for certain loans from the bank a trust deed of certain other lands had been made in its favor. To enforce the security these lands had been sold under the deed, the bank purchasing and afterwards holding the same for sale. It was held that these lands and that part of the bank building not occupied by it were not exempt from taxation. The court declares the rule of strict construction to which we have before referred, and say: "It is to be presumed that the exemption from other than the designated tax was in consideration that the capital would be employed for its legitimate purposes. * * * In our judgment, the limited exemption cannot be extended to property used beyond the actual wants of the corporation in carrying out the purposes of its creation." The court cite, with approval, among other cases, State *v.* Commissioners of Mansfield, 23 N. J. L., 510, in which, under a charter authorizing generally a railroad company to purchase and hold real estate, it was held that lands acquired by the company and occupied by dwelling-houses which it let to its employees was not exempt. In the latter case of State *vs.* Hancock, 35 N.

30 J. L., 537, the sharp contrast which is made prominent in the opinion in State *vs.* Mansfield as a test of taxability, between what is strictly necessary and what is convenient for the purposes of the corporation, is disapproved; but the decision in the latter case is not opposed to our view of the law.

See, further, Vermont Central R. R. Co. *v.* Burlington, 28 Vt., 193; Inhabitants of Worcester *vs.* Western R. R. Co., 4 Met., 564; Mil. & St. Paul R'y Co. *vs.* City of Milwaukee, 34 Wis., 271.

Order affirmed.

DICKINSON, *J.*

Judge Collins, having tried the case below, did not participate in this decision.

31 (6.)

STATE OF MINNESOTA:

Supreme Court, General October Term, A. D. 1887.

MONDAY MORNING, 9.30 O'CLOCK, *Dec. 19th, A. D.* 1887.

Court convened pursuant to adjournment; all the justices being present.

TODD COUNTY, Respondent,
vs.
THE ST. P., M. & M. R'Y COMPANY, Appellant. } No. 177. 5139.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel for the respective parties, submitted to the court for decision, and taken under advisement.

A true record.

Attest: J. D. JONES, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: J. D. JONES, *Clerk.*

32 [Endorsed:] 5139. State of Minnesota, supreme court. Copy of minutes of argument. Filed Feb. 20, A. D. 1888. J. D. Jones, clerk.

33 (7.)

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1887.

TODD COUNTY, Respondent,
vs.
THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, Appellant. } No. 177. Appeal from District Court, Seventh Judicial District, County of Todd.

This cause having been duly argued and submitted at the general October term of this court, A. D. 1887, upon the return to the appeal herein, now, after full and mature deliberation had thereon, it is here and hereby ordered that the order of the court below herein appealed from be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered February 20, A. D. 1888.

By the court.

Attest: J. D. JONES, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: J. D. JONES, *Clerk.*

34 [Endorsed:] No. 5139. State of Minnesota, supreme court. Copy of order for judgment. Filed Feb. 20, A. D. 1888. J. D. Jones, clerk. Entered on page 6, "G."

35 (8.)

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1887.

In the matter of proceedings to enforce payment of the taxes on real estate remaining delinquent on the first Monday in January, 1886, for the county of Todd, State of Minnesota.

TODD COUNTY, Respondent,
vs.
THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, Appellant. } No. 177.

Pursuant to an order of court duly made and entered in this cause on the 20th day of February, A. D. 1888, it is here and hereby determined and adjudged that the order of the court below herein appealed from, to wit, of the district court of the seventh judicial district, sitting within and for the county of Todd, be, and the same hereby is, in all things affirmed.

Dated and signed this 20th day of February, 1888.

By the court.

Attest: J. D. JONES, *Clerk.*

36 [Endorsed:] 5139. State of Minnesota, supreme court. Transcript of judgment. Filed Feb'y 20th, A. D. 1888. J. D. Jones, clerk.

STATE OF MINNESOTA, *Supreme Court,* } *ss:*

I, J. D. Jones, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled as appears from the original remaining of record in my office, that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 20th day of February, A. D. 1888.

J. D. JONES, *Clerk.*

37 (9.)

STATE OF MINNESOTA, } ss:
County of Todd, }

TODD COUNTY, *in re.* PROCEEDINGS TO ENFORCE PAYMENT OF TAXES Delinquent on Real Estate January 4th, 1886, for the County of Todd, State of Minnesota,

vs.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY.

To Elisha Wood and Moses Clapp, attorneys in the above-named proceedings for the county of Todd, and Jacob Fisher, clerk of said district court.

Please to take notice that the above-named St. Paul, Minneapolis and Manitoba Railway Company appeal to the supreme court of the State of Minnesota from the judgment of the said district court entered herein and docketed in the office of the clerk of said court on the ninth day of March, 1888, in favor of the said Todd county for the enforcement of the payment of said taxes and against the said St. Paul, Minneapolis and Manitoba Railway Co. and the land sought to be taxed in the proceeding for the sum of two thousand two hundred and ninety-three $\frac{87}{100}$ dollars.

Dated this 30th day of March, 1888.

S. L. CAMPBELL,
Attorney for St. Paul, Minneapolis & Manitoba Railway Co.

38 [Endorsed:] District court, county of Todd. In proceedings to enforce payment of delinquent taxes on the first Monday in January, 1886, for the county of Todd *vs.* St. Paul, Minneapolis and Manitoba Railway Co. Notice of appeal. Due service of the within notice is hereby admitted at Long Prairie, Minnesota, on this third day of April, A. D. 1888. E. B. Wood, county attorney for Todd county; Jacob Fisher, clerk of the dist. court. Filed in my office this 3rd day of April, A. D. 1888. Jacob Fisher, clerk of the court.

39 (10.)

Answer of St. Paul, Minneapolis and Manitoba Railway Co., being same as answer heretofore given and set out in full and marked.

(2.)

Except that this answer is signed by W. E. Smith, as attorney for Railway Co., in place of R. B. Galusha & Young & Lightner.

40 (11.)

Judgment of supreme court of February, 20th, 1888, as heretofore given and set out marked.

(8.)

41 & 42 [Endorsed:] State of Minnesota, supreme court. Todd County, respondent, *vs.* The St. P., M. & M. R'y Co., appel-

lant. Transcript of judgment. Filed Feb'y 21st, A. D. 1888. Jacob Fisher, clerk.

43 (12.)

Mandate.

STATE OF MINNESOTA, *Supreme Court*, } ss:

The State of Minnesota to the hon. judge and officers of the district court of the seventh judicial district, sitting within and for the county of Todd, Greeting:

Whereas lately in your court, in an action therein pending wherein, in the matter of proceedings to enforce payment of the taxes on real estate remaining delinquent on the first Monday in January, 1886, for the county of Todd, State of Minnesota, Todd County was plaintiff and The St. Paul, Minneapolis and Manitoba Railway Company was defendant, a certain order was entered therein, dated August 30th, 1887, from which order said defendant appealed to this court, having procured said cause to be certified to this court by your court, and whereas the same was duly argued, heard, and submitted at the general October term, A. D. 1887, of our supreme court, after mature deliberation thereupon had our supreme court did adjudge, determine, decree, and order "that the order of the court below herein appealed from be, and the same hereby is, in all things affirmed, and that the plaintiff and respondent above named have judgment accordingly." A copy of the entry of judgment thereupon in this court is herewith transmitted and made part of this remittur.

Now, therefore, this mandate is to you directed and certified to inform you of these proceedings had in our supreme court in said hereinbefore-mentioned cause, and the same is hereby and herewith remanded to your court for such other or further record and proceedings therein as may be by law necessary, just, and proper under and by virtue of the said order herein made.

Seal of the Supreme Court.

Witness the Hon. James Gilfillan, chief justice of the supreme court aforesaid, and the seal of said court, at St. Paul, this 20th day of February, A. D. 1888.

J. D. JONES,
Clerk of the Supreme Court.

44 [Endorsed:] Supreme court, State of Minnesota. Mandate to the district court of Todd county. Todd County, respondent, against The St. P., M. & M. R'y Co., appellant. Filed Feb'y 21st, 1888. Jacob Fisher, clerk of the dist. court.

45 (13.)

STATE OF MINNESOTA, *County of Todd,* } ss:

District Court, 7th Judicial District.

In the matter of proceedings to enforce payment of taxes on real estate remaining delinquent on the first Monday of January, 1886, for the county of Todd, State of Minnesota.

A list of taxes on real property delinquent on the first Monday of January, 1886, for said county of Todd having been duly filed in the office of the clerk of this court, and the notice and list required by law having been duly published as required by law, and an answer having been filed by the St. Paul, Minneapolis and Manitoba Railway Company, which is hereto attached and forms a part of the judgment within these proceedings, a corporation created and existing under the laws of the State of Minnesota, and the issues raised by said answer having been tried by the court, and from the testimony introduced at the trial, and the stipulation of the parties as to the facts in this action, after argument by counsel for the respective parties, the court made and filed its findings of fact and conclusions of law as follows:

46 *Findings of Fact.*

I. That the defendant is a corporation duly organized under an act entitled "An act to amend title 1 of chapter 34 of the General Statutes of Minnesota relating to corporations, being chapter 30 of the General Laws of 1878, and the acts amendatory thereof," and that the said railway company now is and at all times since June (Jan'y), 1879, has been the owner and in possession of and engaged in operating the lines of railroad hereinafter mentioned.

II. That the said company owns in fee and did prior to the levy and assessment of the taxes covered by this proceeding the several tracts of land and each and all of them set up and described in the defendant's answer, and that said lands are no part of the congressional land grants to the State of Minnesota, but were purchased during the year 1882 from private parties by J. J. Hill, and by him deeded to defendant during the year 1882, and have been held and owned by the defendant in fee from the date of said purchase.

III. That the Minnesota & Pacific Railroad Company was
47 created a corporation by an act of the Legislative Assembly of the Territory of Minnesota, approved May 22, 1857, entitled "An act of Congress to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory and granting lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State,' and granting certain lands to railroad companies therein named."

IV. That by said act of May 22, 1857, it was provided (in the eighteenth section thereof) as follows in regard to said Minnesota & Pacific Railroad Company: "The said company shall and will, on or before the 1st day of March in each year, pay into the treasury of the Territory or future State three per centum of the gross earnings of said railroad company for the year ending on the last day of the preceding December, in lieu of all taxes and assessments whatsoever;" and in and by said section it was further provided as follows: "And for securing to the Territory or State the payment of the aforesaid per centum it is hereby declared that the State shall have a lien upon the railroads of said company and upon all other property, estate, and effects of said company, whether real, personal, or mixed; and the lien hereby secured shall take and have precedence of all demands, decrees, and judgments against said company;" that in and by said section it was further provided as follows: "And in consideration of the said annual payments the said company shall be forever exempt from all taxes and assessments whatever by the Territory or State which shall succeed
48 the Territory, or by any county, town, city, village, or other municipal organization in the Territory or State; and all stocks of the Minnesota & Pacific Railroad Company, whether belonging to said company or individuals, and upon all franchises or estate, real, personal, or mixed, held by said company; and said lands granted by said act of Congress hereby authorized to be conveyed to the said Minnesota & Pacific Railroad Company shall be exempt from all taxation until sold and conveyed by said company;" and by said act of May 22, 1857, there was granted to the said Minnesota & Pacific Railroad Company all of the interests of the Territory and State of Minnesota in the lands granted to said Territory to aid in the construction of said lines of railroad by the act of Congress mentioned in the title of said act, and which act of Congress was approved March 3, 1857.

V. That thereafter all and singular the rights, privileges, franchises, lands, property, and interests of said Minnesota & Pacific Railroad Company became and were vested in the State of Minnesota and were by a public law of said State of Minnesota entitled "An act to facilitate the construction of the Minnesota & Pacific Railroad Company and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, granted by said State to the St. Paul & Pacific Railroad Company.

VI. That by purchase thereof at mortgage foreclosure sales in May and June, 1879, the defendant became and still is the owner in fee of all that part of the lines of railroad of the Minnesota & Pacific Railroad Company & the St. Vincent extension of the St. Paul and Pacific Railroad Company, extending from St. Paul, in
49 the county of Ramsey, to St. Vincent, in the county of Kittson, in said State of Minnesota, and of the land granted to aid in the construction of the said St. Vincent extension, in all respects as alleged in the defendant's answer in this proceeding; and of all the property, rights, franchises, immunities, exemptions, and privileges at any time possessed by said companies or either of them,

including the exemption from ordinary taxation hereinbefore mentioned pertaining to said companies' lines of railroad and granted lands, which said purchase by said defendant and its right and title to all of said lines of railroad, property, rights, franchises, immunities, exemptions, and privileges were fully confirmed to said defendant in all respects as alleged in said answer.

VII. That the said defendant accepted the provisions of said act relating to taxation, and thereby the same became and ever has been obligatory upon the State and the said companies, as alleged in said answer; and that the said land law and the contract therein expressed has never been altered, repealed, or rescinded, but still remains in full force, and that the said companies and the said defendant have always complied with the provisions thereof on their part, as alleged in said answer.

VIII. That the said lands as to which said answer is herein interposed are the same lands which are particularly described in said answer, and were all purchased by said defendant on account of their being valuable timber lands, as alleged in said answer, and said defendant has proceeded with due diligence to convert the timber growing on said land into bridges and tie timber for the use of its road, as therein alleged.

50 IX. That the taxes to enforce the payment of which this action is brought remain delinquent and unpaid.

Conclusions of Law.

I. That the lands described in the answer in this proceeding are not exempt from taxation, but are subject to the taxes levied and assessed thereon, and are now delinquent and unpaid, and to enforce the collection of which this proceeding was brought.

II. That the plaintiff is entitled to judgment against the defendant, as provided by law, for the collection of such taxes and the interest and penalties thereon, together with the costs of this proceeding; and judgment is hereby ordered accordingly.

Dated August 30, 1887.

L. W. COLLINS,
L. L. BAXTER,
Judges.

51 The entry of judgment having been legally stayed for the court to certify the matter to the supreme court, and the said court having certified its findings of fact and decisions upon said trial to the supreme court of the State of Minnesota for its consideration, and upon said cause being certified to the supreme court, it was stipulated that, in addition to the facts found by the trial court, the following facts should constitute a part of the record: That at the time of the purchase of the land in question by respondent there were nine forty-acre tracts that had no timber on suitable for ties and construction materials for railroad. The nine forties were interspersed through the thirty-five thousand acres; that one of the forties included in the answer as a part of the pur-

chase by respondent was in part platted as a town site in 1879, some of the lots being now held by respondent; that upon the section wherein said town plat is located there was at the time of the purchase by respondent two hundred acres of timber fit for railroad purposes. No timber was cut prior to October, 1885, the bulk being cut in 1886 and the balance being cut at time of trial. The timber was cut into planks, boards, ties, and lumber of all kinds. About one-third of the timber was used by respondent in constructing and repairing the railroad of respondent in the Territory of Dakota, constructed under the provisions of chapter 273 of the Civil Code of that Territory. The balance of said timber and lumber was used by respondent upon its lines in Minnesota. A few tons of hay cut from the grass upon some of the land was sold by agent of respondent and applied by him in partial payment for his services. And the said matter having been tried in the supreme court of said State at the October term, 1887, and the said supreme court having affirmed the order of the district court in said action, and the clerk of
52 the supreme court of the State of Minnesota having transmitted to the clerk of the district court in and for Todd county, in the State of Minnesota, a certified copy of such order, it is hereby adjudged and decreed that each piece and parcel of land hereinafter described is liable for taxes, penalties, costs, and disbursements to the amount set opposite the same, to wit:

53 *Description of Lands.*

Description of lands.	Section.	Town.	Rge.	Total amount of taxes, delinquent penalty, costs, and disbursements.		Name of corporation answering, the St. Paul, Minneapolis and Manitoba Railway Company.
				Dollars.	*Cents.*	
Town of Eagle Valley—						
N. ½ N. E. ¼ & S. E. ¼	4	131	34	$40	00	
S. W. ¼ S. E. ¼ & S. W. ¼ N. W. ¼	5	131	34	10	09	
S. W. ¼	5	131	34	23	07	
S. E. ¼ N. E. ¼ & E. ½ S. E. ¼	6	131	34	17	40	
S. ½	7	131	34	48	40	
W. ½ N. E. ¼ & W. ½ S. E. ¼	8	131	34	23	02	
W. ½	8	131	34	45	22	
S. W. ¼ N. W. ¼, N. E. ¼ S. W. ¼, & W. ½ S. W. ¼	10	131	34	21	73	
N. E. ¼	11	131	34	21	73	
N. E. ¼ S. E. ¼ & W. ½ S. E. ¼	11	131	34	17	40	
S. ½ N. W. ¼ & N. ½ S. W. ¼	12	131	34	22	34	
S. E. ¼ N. E. ¼ & W. ½ N. E. ¼	14	131	34	16	82	
N. W. ¼	14	131	34	22	15	
S. W. ¼	15	131	34	22	94	
S. E. ¼ N. E. ¼ & W. ½ N. E. ¼	17	131	34	17	47	

Description of Lands—Continued.

Description of lands.	Section.	Town.	Rge.	Total amount of taxes, delinquent penalty, costs, and disbursements.		Name of corporation answering, the St. Paul, Minneapolis and Manitoba Railway Company.
				Dollars	*Cents.*	
N. W. ¼	18	131	34	26	16	
S. E. ¼ S. W. ¼	18	131	34	7	14	
N. ½	19	131	34	53	45	
S. E. ¼	19	131	34	28	55	
S. W. ¼ S. E. ¼	20	131	34	6	60	
N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	20	131	34	18	25	
W. ½ N. W. ¼	20	131	34	12	43	
W. ½ N. E. ¼	21	131	34	15	59	
N. W. ¼	21	131	34	31	66	
E. ½ N. E. ¼ & N. W. ¼ N. E. ¼	22	131	34	17	56	
S. W. ¼ N. E. ¼ & N. W. ¼ S. E. ¼	22	131	34	12	90	
N. E. ¼ S. E. ¼	22	131	34	7	91	
W. ½	23	131	34	49	82	
S. E. ¼ S. E. ¼	24	131	34	6	33	
E. ½ N. E. ¼ & N. W. ¼ N. E. ¼	25	131	34	19	17	
E. ½ S. E. ¼, N. W. ¼ S. E. ¼, & N. E. ¼ S. W. ¼	25			25	29	
S. E. ¼ S. W. ¼ & S. ½, N. E. ¼ S. W. ¼	27	131	34	11	12	
N. W. ¼ S. W. ¼, less 1½ acre	27			7	63	
W. ½ S. W. ¼	28			15	03	
S. ½ N. E. ¼	29			17	46	
54 N. W. ¼ N. E. ¼ & N. W. ¼	29	131	34	40	25	
S. E. ¼	29	131	34	34	13	
E. ½ N. E. ¼ & N. W. ¼ N. E. ¼	30	131	34	23	19	
N. E. ¼ N. E. ¼	31	131	34	8	25	
N. E. ¼ & N. ½ S. E. ¼	32	131	34	50	79	
All of	33	131	34	100	44	
N. E. ¼ & S. E. ¼	34	131	34	56	56	
W. ½ N. W. ¼	34	131	34	14	76	
S. ½ N. E. ¼ & S. E. ¼ N. W. ¼	35	131	34	21	37	
S. W. ¼ S. E. ¼ & E. ½ S. W. ¼	35	131	34	21	21	
N. E. ¼ N. W. ¼	35	131	34	8	04	
Town of Wykeham—						
N. E. ¼, W. ½ S. E. ¼, & E. ½ S. W. ¼	1	131	35	56	02	
N. E. ¼	2			28	40	
S. W. ¼	2			28	40	
N. W. ¼	3			28	40	
N. ½	4			58	14	
E. ½ & N. W. ¼	5			65	29	
E. ½ N. E. ¼ & S. W. ¼ N. E. ¼	10			21	47	
W. ½ S. E. ¼, E. ½ S. W. ¼, & S. W. ¼ S. W. ¼	10			35	29	

Description of Lands—Continued.

Description of lands.	Section.	Town.	Rge.	Total amount of taxes, delinquent penalty, costs, and disbursements.		Name of corporation answering, the St. Paul, Minneapolis and Manitoba Railway Company.
				Dollars.	*Cents.*	
N. ½	11	-----	------	56	12	
N. ½, N. E. ¼ S. W. ¼, & N. W. ¼ S. W. ¼	12	-----	------	71	23	
E. ½ S. E. ¼ & N. W. ¼ S. E. ¼	12	131	35	17	33	
E. ½ S. W. ¼ & S. W. ¼ S. W. ¼	13	131	35	21	47	
N. ½	14	131	35	56	02	
S. W. ¼	14	131	35	28	40	
N. ½	21	131	35	59	17	
N. W. ¼ S. E. ¼, N. ½ S. W. ¼, & S. W. ¼ S. W. ¼	21	131	35	30	40	
E. ½	22	131	35	58	14	
S. W. ¼	22	131	35	39	49	
W. ½ S. E. ¼, N. W. ¼, & E. ½ S. W. ¼	23	131	35	62	33	
N. E. ¼ & E. ½ N. W. ¼	24	131	35	46	53	
55 N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	24	131	35	22	69	
E. ½ N. E. ¼, N. W. ¼ N. E. ¼, & N. E. ¼ S. E. ¼	26	131	35	27	37	
S. E. ¼ N. W. ¼ & W. ½ N. W. ¼	26	131	35	22	26	
N. E. ¼ S. W. ¼ & W. ½ S. W. ¼	26	131	35	22	26	
N. ½ N. E. ¼, E. ½ N. W. ¼, & S. W. ¼ N. W. ¼	27	131	35	34	00	
S. W. ¼	27	131	35	26	23	
W. ½ N. E. ¼ & N. ½ S. E. ¼	28	131	35	34	71	
E. ½	34	131	35	62	33	
N. E. ¼ & N. ½ N. W. ¼	35	131	35	27	21	
S. W. ¼, N. W. ¼	35	131	35	7	13	
				$2,293	87	

56. And the amount of taxes, penalties, and costs and disbursements—total amount, $2,293.87 (dollars)—to which, as hereinbefore stated, each of said pieces or parcels of land is liable, is hereby declared a lien upon such pieces or parcels of land as against the estate, right, title, claim, or lien of whatever nature, in law or equity, of every person, company, and corporation whatsoever; and it is adjudged that unless the amount to which each of said pieces or parcels of land is liable be paid each of said pieces or parcels be sold, as provided by law, to satisfy such amount to which it is liable.

Dated at Long Prairie, Minn., March 9th, 1888.

[Seal of Dist. Court.]

JACOB FISHER,

Clerk of the District Court in and for Todd Co., Minn.

57 (14.)

STATE OF MINNESOTA, } ss:
County of Todd, }

I, Jacob Fisher, clerk of the district court for the seventh judicial district and county of Todd aforesaid, do hereby certify that I have compared the foregoing copy of tax judgment, notice of appeal, and all the papers hereto attached with the originals on file in said clerk's office, and that the same is a full and correct transcript therefrom.

Witness my hand and the seal of said court, at Long Prairie, this 3d day of April, 1888.

[Seal of District Court.]

JACOB FISHER,
Clerk Dist. Court.

58 (15.)

STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1888.

FRIDAY MORNING, 9.30 O'CLOCK, *June 29th, A. D.* 1888.

Court convened pursuant to adjournment, all the justices being present.

IN PROCEEDINGS TO ENFORCE PAYMENT OF Taxes, &c., for The County of Todd, Respondent, *vs.* THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, Appellant.	No. 229. 5400.

This cause came on to be heard this day upon the return to the appeal herein.

And, upon motion of counsel for respondent and upon due consideration thereof, it is ordered that the judgment of the court below, herein appealed from, be, and the same hereby is, in all things affirmed for the reasons stated and given in the opinion of this court made and filed on the first day of February, A. D. 1888, in a former review of these proceedings upon certification by the district court from which this appeal is taken, and that the respondent have judgment accordingly.

A true record.

Attest: J. D. JONES, *Clerk.*

The foregoing is a full and true copy of the minutes of argument and order in the above-entitled cause.

Attest: J. D. JONES, *Clerk.*

59 [Endorsed.] 5400. State of Minnesota: Supreme court. Copy of minutes of argument. Filed July 26, A. D. 1888. J. D. Jones, clerk.

60 (16.)

STATE OF MINNESOTA:

In Supreme Court, April Term, A. D. 1888. No. 229. 5400.

In the matter of proceedings to enforce payment of taxes upon real estate remaining delinquent on the first Monday of January, 1886, for the county of Todd, State of Minnesota.

TODD COUNTY, Respondent,
vs.
THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, Appellant.

The appeal from the judgment entered in this action in the district court for Todd county on the 9th day of March, 1888, adjudging and decreeing that the lands described in the answer herein and each and every piece and parcel thereof is liable for the taxes claimed against the same in these proceedings, having been heard on the 29th day of June, 1888, in this court, and an order having been entered directing and affirming the judgment appealed from and ordering judgment to be entered herein in conformity with said order: Now, on motion of M. E. Clapp, attorney general of the State of Minnesota, it is adjudged—

That the judgment appealed from be, and the same is hereby, in all things affirmed, and that the land described in said answer *is* liable for the taxes, penalties, and costs claimed against the same in these proceedings and each and every parcel thereof be sold, as provided by law, to satisfy such amount, together with — dollars, costs in this court.

Dated and signed this 26th day of July, 1888.

By the court.

Attest: J. D. JONES, *Clerk.*

61 [Endorsed:] No account. State of Minnesota: Supreme court. Todd County, respondent, *vs.* The St. P., M. & M. R'y Co., appellant. Transcript of judgment filed.

STATE OF MINNESOTA, *Supreme Court,* } *ss:*

I, J. D. Jones, clerk of said supreme court, do hereby certify that the foregoing is *is* a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Seal of the Supreme Court, State of Minnesota.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this 26th day of July, A. D. 1888.

J. D. JONES, *Clerk.*

62 (17.)

STATE OF MINNESOTA :

In Supreme Court.

In the matter of proceedings to enforce payment of taxes upon real estate remaining delinquent on the first Monday in January, 1886, for the county of Todd, State of Minnesota.

COUNTY OF TODD, Respondent,
vs.
THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILROAD COMPANY, Appellant.

Know all men by these presents that we, W. P. Clough and Edward Sawyer, of St. Paul, Minnesota, are held and firmly bound unto the county of Todd, in the State of Minnesota, in the full and just sum of six thousand dollars, to be paid to the said county of Todd; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of July, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, in an action or proceeding pending in the supreme court of the State of Minnesota between the said county of Todd and the said St. Paul, Minneapolis and Manitoba Railway Company a judgment was rendered in said court against

63 the said St. Paul, Minneapolis and Manitoba Railway Company that the lands described in the proceedings in said action and each parcel thereof should be sold to pay the taxes levied on the same, the amount of said taxes, with interest and costs, amounting to two thousand two hundred ninety-three & $\frac{87}{100}$ dollars, the citation having issued, directed to the said county of Todd, citing and admonishing that it appear in the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said St. Paul, Minneapolis and Manitoba Railway Company shall prosecute its said writ of error to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

W. P. CLOUGH. [SEAL.]
EDW. SAWYER. [SEAL.]

Sealed and delivered in presence of—
E. T. STEVENSON.
M. D. GROVE.

UNITED STATES OF AMERICA,
Ramsey County, State of Minnesota.

W. P. Clough and Edward Sawyer, being duly sworn, depose and

say each for himself that he is worth the sum of twelve thousand dollars over and above all just debts, liabilities, and exemptions.

W. P. SLOUGH.
EDW. SAWYER.

[SEAL.] E. T. STEVENSON,
Notary Public, Ramsey County, Minnesota.

Approved the within bond and the sureties thereto.

64 [Endorsed:] 5400. State of Minnesota supreme court. County of Todd *vs.* St. P., M. & M. R'y Co. Copy. Bond on appeal. Filed July 27, 1888. J. D. Jones, clerk.

65 *I* admit due and personal service of the within and annexed citation upon *me* made this 13th day of August, 1888.

MOSES E. CLAPP,
E. B. WOOD,
Attorneys for the County of Todd.

66 STATE OF MINNESOTA:

In Supreme Court.

In the matter of proceedings to enforce payment of taxes upon real estate remaining delinquent on the first Monday in January, 1886, for the county of Todd, State of Minnesota.

COUNTY OF TODD, Respondent,
vs.
THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, Appellant.

The United States of America to the county of Todd, in the State of Minnesota, and to Elisha Wood and Moses E. Clapp, attorneys for said county of Todd, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Minnesota on the 26th day of July, 1888, wherein The St. Paul, Minneapolis and Manitoba Railway Company is plaintiff in error and The County of Todd is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done in that behalf.

Witness the Honorable James Gilfillan, chief justice of the supreme court of the State of Minnesota, this 27th day of July, in the year of our Lord eighteen hundred and eighty-eight.

JAMES GILFILLAN,
Chief Justice Supreme Court Minnesota.

67 STATE OF MINNESOTA:

In Supreme Court.

In the matter of proceedings to enforce payment of taxes upon real estate remaining delinquent on the first Monday in January, 1886, for the county of Todd, State of Minnesota.

COUNTY OF TODD, Respondent,
vs.
THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, Appellant.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said above-entitled action or proceeding, before you, being the highest court of law or equity of the said State of Minnesota in which a decision could be had in the said suit between The County of Todd and The St. Paul, Minneapolis and Manitoba Railway Company, wherein was drawn in question the construction of that clause of the Constitution of the United States which prohibits a State from passing a law impairing the obligation of a contract, and the decision was against the right, privilege, or exemption specially set up and claimed under
68 such clause of the said Constitution by the said St. Paul, Minneapolis and Manitoba Railway Company, and was necessary to the adjudication of the cause, and manifest error hath happened, to the great damage of the said St. Paul, Minneapolis and Manitoba Railway Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Samuel F. Miller, presiding justice of the said Supreme Court, the — Monday of ——, in the year of our Lord one thousand eight hundred and eighty-eight.

—— ——. [L. S.]

And also—

[U. S. Circuit Court Seal, Dist. of Minnesota.]

OSCAR B. HILLIS,
Clerk of the Circuit Court of the United States,
District of Minnesota.

Also— J. D. JONES,

[Seal of the Supreme Court, State of Minnesota.]

Clerk Supreme Court.

Allowed by—
JAMES GILFILLAN,
Chief Justice Supreme Court, Minnesota.

69 [Endorsed:] 5400. County of Todd *vs.* St. P., M. & M. R'y Co. Writ of error. Filed July 27, 1888. J. D. Jones, clerk.

Endorsed on cover: Minnesota supreme court. No. 132. The St. Paul, Minneapolis and Manitoba Railway Company, plaintiff in error, *vs.* The County of Todd, in the State of Minnesota. Filed September 29, 1888.

Supreme Court of the United States.

OCTOBER TERM A. D. 1888.

COUNTY OF TODD,
Defendant in Error,

vs.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY,
Plaintiff in Error.

Brief of Plaintiff in Error upon motion of Defendant in Error to dismiss Writ of Error to Supreme Court of the State of Minnesota on the ground that no Federal question is involved.

R. C. BENTON,
Attorney for Palintiff in Error.

M. D. GROVER,
Of Counsel.

H. M. SMYTH PRINTING COMPANY, ST. PAUL.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1888.

COUNTY OF TODD,
Defendant in Error,

vs.

THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY,
Plaintiff in Error.

Brief of plaintiff in error upon motion of defendant in error to dismiss writ of error to Supreme Court of the State of Minnesota, on the ground that no federal question is involved.

STATEMENT OF CASE.

Section 1 of chapter 11 of the Statutes of Minnesota, entitled "Taxes," reads as follows: "All real and personal property in this State, and all personal property of persons residing therein, the property of corporations now existing or hereafter created, and the property of all banks or banking companies now ex-

isting or hereafter created, and of all bankers, except as are hereinafter expressly excepted, is subject to taxation, and such property or the value thereof shall be entered in the list of taxable property for that purpose in the manner prescribed in this act; *provided, that railroad, insurance and telegraph companies shall be taxed in such manner as now is or may be hereafter fixed by law.*"

Section 6 reads: "That all real property in this State subject to taxation shall be listed and assessed every even numbered year, with reference to its value on the first day of May preceding the assessment; and all real estate becoming taxable, any intervening year shall be listed and assessed with reference to its value on the first day of May of that year."

No different manner of taxing the real estate of railroad companies is fixed by law except, *First:* By the provisions of section 128, and the following sections, under which the payment of a certain percentage of gross earnings may be made in lieu of other taxes. *Second:* Under the provisions of the charter of plaintiff in error.

Plaintiff in error has not accepted the provisions of section 128. Its real estate is, therefore, subject to taxation under the provisions of sections 1 and 6, unless a different manner of taxation is fixed by its charter.

The assessment in question was in fact made pursuant to the provisions of section 1 and 6, of chapter 11 of General Laws.

The tax not having been paid, the county auditor of Todd County proceeded to file a list of delinquent

taxes pursuant to section 70 of said chapter, which reads as follows:

"On or before the 20th day of June the county auditor shall file in the office of the clerk of the District Court of the county, a list of the delinquent taxes, etc., describing each piece or parcel, etc., with the name of the owner and the amount of the taxes delinquent, and shall verify such list by his affidavit that such is a correct list of the taxes delinquent for the year or years therein appearing, upon real estate in said county. The filing of such list shall have the force and effect of filing a complaint in an action by the county against each piece and parcel of land therein described, to enforce payment of the taxes and penalties therein appearing against it, and shall be deemed the institution of such action; and the same shall operate as notice of the pendency of such action."

Section 75 reads: "Any person, company or corporation having any estate, right, title or interest in, or lien upon any piece or parcel of land embraced in said list, may within twenty days after publication of said notice, file in the office of the said clerk, an answer, verified as pleadings in civil action, setting forth its defense or objection to the tax, etc."

The plaintiff in error duly filed its answer, and pleaded as its defense its charter, which is the charter of the Minnesota and Pacific Railroad Company, approved May 22, 1857, and the contract of exemption from taxation contained therein.

The answer so far as this point is concerned, reads thus: "That in and by said act of May 22, 1857,

it was provided, (in the eighteenth section thereof,) as follows in regard to said Minnesota and Pacific Railroad Company. 'The said company shall and will on or before the first day of March in each year, pay into the treasury of the territory or future state, three per centum of the gross earnings of the said railroad for the year ending on the last day of the preceding December, *in lieu of all taxes and assessments whatever.*' And in and by said section it was further provided as follows: 'And for securing to the territory or state the payment of the aforesaid per centum, it is hereby declared that the state shall have a lien upon the railroads of the said company, and upon all other property, estate and effects of the said company, whether real, personal, or mixed; and the lien hereby secured shall take and have precedence of all demands, decrees and judgments against the said company.' And in and by said section it was further provided as follows: 'And in consideration of such annual payments, the said company shall be forever exempt from all assessments and taxes whatever by the territory, or state which shall succeed the territory, or by any county, city, town, village, or other municipal authority in the territory or state, upon all stock in the said Minnesota and Pacific Railroad Company, whether belonging to said company or to individuals, and upon all its franchises or estate, real, personal, or mixed, held by said company, and said land granted by said act of Congress hereby authorized to be conveyed to the said Minnesota and Pacific Railroad Company shall be exempt from all taxation until sold and conveyed by said company.'" (Folios 22 to 27.)

The answer further alleges: "That said companies and this respondent have at all times fully complied with all the provisions of law in respect to return of gross earnings and payment of a tax of three per centum thereon in lieu of all other taxes, and in respect to reports of lands sold or contracted to be sold, and forfeited contracts. That the said parcels of land and each of them as to which this answer is interposed were purchased by and conveyed to this respondent long prior to the assessment and levy of the taxes in this proceeding sought to be enforced, and ever since such conveyance all said lands have been and now are owned in fee by this respondent; and that said lands were and each parcel thereof was purchased and ever since such purchase have been and now is held and used by this respondent for railway purposes, and for the maintenance of its lines of railway, and that the same are necessarily so held and used for such purposes by this respondent.

Wherefore this respondent says that said parcels of land are, and each of them is, exempt from "taxes in this proceeding sought to be enforced against the same, and prays for judgment that the said parcels of land and each of them, be wholly discharged from said taxes." (Folios 31 and 32.)

The trial court found that defendant had succeeded to all the rights and exemptions contained in said act of May 22, 1857, including the exemption from taxation therein mentioned. (Folios 4, 5 and 6.)

The Supreme Court so held. (See Opinion, fols. 89, 90 and 91.)

As a conclusion of law, the trial court held: "That the land described in the answer was not exempt from

taxation under said act, but was subject to the taxes levied and assessed." (Folio 49.)

The Supreme Court so held, and upon the ground that the exemption from taxation contained in said charter was not applicable to the land in question.

The opinion of the Supreme Court upon this point is in part as follows: "The purchase of the land in question could not, we think, be deemed in any proper sense necessary for the prosecution of this enterprise; nor was it such an ordinary appropriation of property to the purposes of the railroad as to come within the reason and scope of the exemption."

Again: "If there is any limit to the exemption, and as to this there can be no question under the authorities, this property was unquestionably, in our opinion, beyond the scope of the exemption. It may be stated as a general proposition, that such real estate of a corporation as it is not itself devoted to use for railroad purposes, is not within such exemption, even though the product of the road be so used." (Folio 103.)

ARGUMENT.

First.

The act of the Territorial Assembly of the Territory of Minnesota, of May 22, 1857, is the charter of plaintiff in error. It is also a contract by which there is secured to it an exemption from taxation, "Of all its property, whether real, personal or mixed, in consideration of the payment annually of three per centum of its gross earnings."

The provisions of the charter in point are as follows:

Section 15: "That no tax shall ever be levied on the stock shares of said company, except the yearly payment to be made by said company as herein provided."

Section 18: Is as stated in the answer; it reads: "In consideration of the grants, privileges and immunities, said company shall pay three per centum of its gross earnings, in lieu of all taxes and assessments whatever. And in consideration of such payments, said company shall be forever exempt from all assessments and taxes whatever, by the territory or state which shall succeed the territory, upon all stock in the Minnesota and Pacific Railroad Company, whether belonging to said company, or individuals, and upon all its franchises or estate, real, personal or mixed."

Section 20: "Said Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this territory, or of the future state, or by other parties, which shall be conveyed to it by this act, or by deed,

gift or purchase, or by operation of law, and may mortgage, pledge, sell and convey the same, or otherwise dispose of all their right, title, interest, claim or demand of, in and to any such lands so granted to said company, and in any other estate, real, personal or mixed, of which said company may be seized, or which it may acquire subsequently thereto, in such manner and on such terms as the directors may think proper."

Section 22: "All the property which the Minnesota and Pacific Railroad Company is authorized to take, possess, hold, use or enjoy by making payment therefor, as in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so take, possess, hold or use the same."

Section 28: "This act is hereby declared to be a public act, and shall be favorably construed to effect the purposes thereby intended."

Second.

No question as to the meaning or construction of the general laws of the State under which the assessment was made arose or was decided by the courts of the State.

The general law provides, as we have seen, section 1, chapter 11: "That all real property in the State shall be entered in the list of taxable property; *provided, that railroad, insurance and telegraph companies shall be taxed in such manner as now is, or hereafter may be fixed by law.*"

To determine the question whether real estate of a railroad company is taxable under the provision of

section 1, and under the general law of the State, it is necessary to inquire and ascertain whether any other manner of taxation has been fixed by law.

There being no claim by plaintiff in error that its property was exempt under the provisions of section 128 of chapter 11 of the general law of the State, its real estate was subject to assessment under the provisions of section 1, unless a different manner of taxation is fixed by and in its charter.

The contention of plaintiff in error was and is, that the land in question is exempt under the provisions of its charter.

The question of such exemption was raised and determined by the State courts adversely to the claim of plaintiff in error.

The determination of the case involved the construction, not of the general laws of the State, but of the charter and contract of plaintiff in error.

In *Douglas vs. County of Pike, 101 U. S. 686*, Chief Justice Waite writes: "As a rule, we treat the construction which the highest court of the State has given a statute, as part of the statute."

The assessment in question was made by the State of Minnesota, in the exercise of the taxing power, through agents and officers appointed to that duty.

By the construction given by the courts of the State, in overruling the claim of exemption of plaintiff in error, the statute is made to read in effect as follows: "All real property of railroad companies not necessary for the prosecution of their enterprise and

devoted to present use for railroad purposes, shall be entered in the list of taxable property."

The judgment of the court below, in terms, and by its necessary operation, gives such effect to a law of the State, as to impair the obligation of the contract of exemption contained in the charter of plaintiff in error, if its construction of said contract is correct.

By the judgment of the State court, the contract of exemption is impaired, if the contract is broad enough to exempt the land in question.

The judgment of the court of the State upon the question as to whether there was or is a contract of exemption, and as to the true construction of said contract, or as to its obligation, is not conclusive, but may be reviewed by writ of error.

In *Home of the Friendless vs. Rouse*, 8 *Wallace*, 430, error to the Supreme Court of Louisiana: "On the 3d day of February, 1853, the legislature of Louisiana passed an act to incorporate the Home of the Friendless. The act of incorporation provided: 'All property of said corporpation shall be exempt from taxation.' The corporation was organized and it acquired real estate. The constitution adopted by the State in 1865 authorized the legislature to impose certain taxes, and soon after the legislature did impose a tax upon such real property."

The question was whether the charter or act of 1853 was a contract never to tax; if so, the subsequent act was in violation of that clause of the constitution which provides that no State shall pass any law impairing the obligation of a contract.

Here there was no question as to the meaning of the later act.

The court construed the charter, and held that the property was exempt.

In *Bank vs. Tennessee, 104 U. S. 493*, error to Supreme Court of Tennessee. The Bank of Commerce was organized under an act of 1856, which provided that it might purchase and hold a lot of ground for the use of the bank as a place of business, and at pleasure to sell and exchange the same, and hold such real and personal property in the State as might be conveyed to it to secure debts due the bank, and might sell and convey the same.

The charter also provided that the bank should pay to the State an annual tax of one-half of one per cent on each share of capital stock, in lieu of all other taxes.

The bank purchased a lot of ground upon which it erected its place of business. It also became the owner of three other city lots.

In 1875 the legislature of the State passed an act defining what property was exempt. In the list of exempt property it did not include any property that was held by the Bank of Commerce.

Under this act a lot of ground in the city of Memphis, purchased by the plaintiff, with its building upon it, and used as its place of business, was assessed, also the city lots.

The Supreme Court of the State held, that the bank was not liable for the tax on so much of the lot and building as was used for its business, but was liable for the taxes on the remainder, and on the three lots.

Here there was no construction of the act of 1875. That was plain enough. There was a construction of the charter and it was held that the exemption was limited to such real estate as was used by the bank as its place of business. And that as to other of its property there had never been any exemption.

A judgment of a State court is reviewable by this court under the clause of the constitution protecting the obligation of contracts against impairment by State legislation, and under the existing statutes defining and regulating its jurisdiction, where the judgment in terms or by necessary operation gives effect to some provision of the State constitution or some legislative enactment which is claimed by the unsuccessful party to impair the particular obligation in question.

In *Bridge Proprietors vs. Hoboken Co., 1 Wallace, 116*, the question was whether a monopoly had been granted to the turnpike company which bound the State not to allow another bridge to be built within certain limits. The State court held that the contract under which it was claimed the monopoly was secured, and which was an act of the legislature passed in 1790, was not violated by a statute enacted in 1860, which in terms granted the right to the railroad company to build a bridge within the limits covered by the monopoly.

The opinion of this court, written by Mr. Justice Miller, is as follows:

"There is a misconception as to what was construed in this court by the State court. It is very obvious that the statute of 1860 was not construed. No doubt

is entertained by this court, none could have been entertained by the State court, that it was intended by the framers of that act to authorize the defendants to build the railroad bridge which they were building and which plaintiff sought to enjoin. The act which was really the subject of construction was the act of 1790 under which plaintiffs claim. For, if that act and the proceedings under it amounted to a contract, and that contract prohibited the kind of structure which the defendants were about to erect under the act of 1860, then the latter act must be void as impairing that contract. If, on the other hand, the first act, and the agreement under it was not a contract, or if, being a contract it did not prohibit the erection of such a structure as that authorized by the act of 1860, the latter act was valid because it did not impair the obligation of the contract.

It was then the act of 1790 which required construction, and not that of 1860, in order to determine whether the latter was violated or not. * * * * We are, therefore, of opinion that the record before us presents a case for the revisory power of this court over the State courts under the 25th section of the act of congress of 1789."

New Jersey vs. Yard, 95 U. S. 104.
Railroad vs. Gaines, 97 U. S. 697.
University vs. People, 99 U. S. 309.
Asylum vs. New Orleans, 105 U. S. 362.

Third.

The writ of error in this case recites that in its determination by the court below there was necessarily drawn in question the construction of that clause of the constitution which prohibits a State court from passing a law impairing the obligation of a contract, and that the decision was against the right claimed by the plaintiff in error, and was necessary to the adjudication of the case.

Home of Friendless vs. Rouse, 8 Wall. 430.

Fourth.

The case of *New Orleans Water Works Company vs. Louisiana Sugar Refining Company, 8 Supreme Court Reporter, 742,* does not support the contention of defendant in error.

The court held, that the consent of the city to the laying of pipes from the river to the works of the sugar refining company, though expressed in the form of an ordinance, was a mere license in fact. That it was in no sense a law.

The court below did not give any effect to the provision of the constitution of 1879, abolishing monopolies. There was no subsequent law impairing the obligation of a contract.

The case is an authority for plaintiff in error.

The court say: "When the existence and the construction of a contract are undisputed, and the State court upholds a subsequent law on the ground that it did not impair the obligation of an admitted contract, it is clear that the court has jurisdiction. When the

State court holds that there was a contract conferring certain rights, and that a subsequent law did not impair those rights, this court has jurisdiction to consider the true construction of the supposed contract; and if it is of opinion that it did not confer the rights affirmed by the State courts, and therefore its obligation was not impaired by the subsequent law, it may on that ground affirm the judgment. So, if the State court upholds the subsequent law on the ground that the contract did not confer the right claimed, this court may inquire whether the supposed contract did give the right, because if it did, the subsequent law cannot be upheld."

R. C. BENTON,
Attorney for Plaintiff in Error.

M. D. GROVER,
Of Counsel.

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

No. 132.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY,

Plaintiff in Error,

vs.

THE COUNTY OF TODD, IN THE STATE OF MINNESOTA.

Assignments of Error and Brief of Plaintiff in Error.

M. D. GROVER,
Counsel for Plaintiff in Error.

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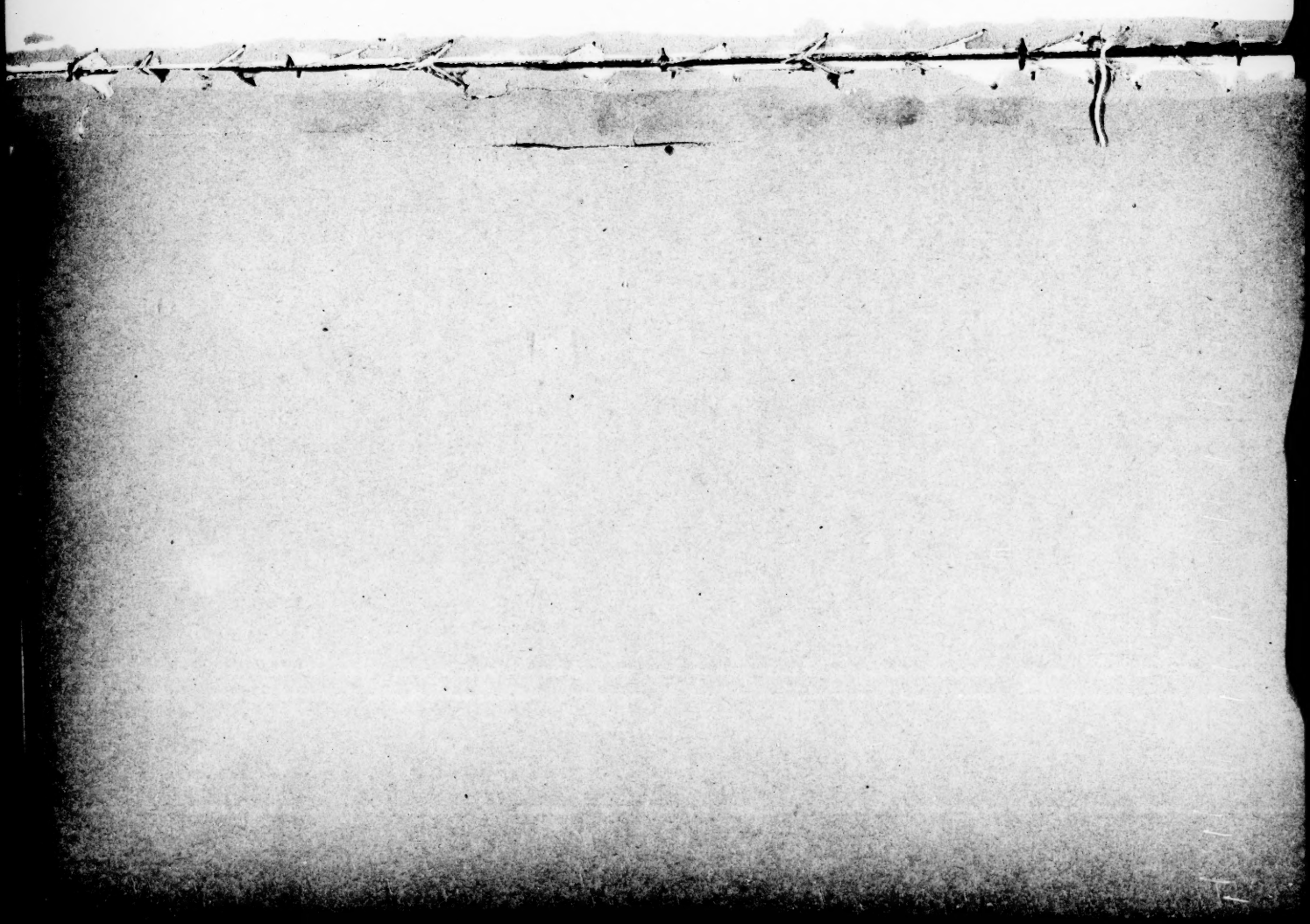

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ASSIGNMENTS OF ERROR.

FIRST.

The conclusion of law that the lands described in the answer were not exempt from the taxes imposed upon them is contrary to and unsupported by the findings of fact.

SECOND.

The court erred in holding that the lands described in the answer were not purchased and so held by the plaintiff in error for its use in the operation and maintenance of its railroad, and for purposes incident to the exercise and enjoyment of its corporate rights, as to be exempt from the taxes imposed.

THIRD.

The court erred in holding that the lands described in the answer and upon which the taxes herein had been assessed were not exempt from taxation under the provisions and contract contained in the charter of plaintiff in error, being an act of the legislative assembly of the territory of Minnesota, approved May 22nd, 1857, it having at all times paid a per centum of its gross earnings as provided therein.

STATEMENT.

Plaintiff in error, in 1882, purchased 35,000 acres of timber land in one body for the purpose of obtaining the timber for cross-ties, bridges and other use in connection with the maintenance of its line of railway.

Such land was assessed by the defendant in error in May, 1884. In answer to proceedings instituted to enforce the assessment, plaintiff in error pleaded that such land was purchased "for railway purposes,

for the maintenance of its railway, and that the same are necessarily so held and used for such purpose." Folio 11.

And the court found, "That the lands were all purchased on account of their being valuable timber lands, as alleged in the answer, and that plaintiff in error had proceeded with due diligence to convert the timber growing on such land into bridges and tie timber for the use of its road, as alleged in the answer." Folio 49.

Interspersed through the 35,000 acres were nine forty-acre tracts that had no timber on them suitable for ties and construction material for railroad use. Upon one of the forties a townsite had been platted before the purchase. Some of the lots in the townsite had not been sold at the time of the purchase. Upon the section wherein such townsite was located there was at the time of the purchase two hundred acres of land covered with timber fit for railroad use.

No timber was cut by plaintiff in error prior to October, 1885. The bulk of the timber was cut in 1886, and the balance was being cut at the time of the trial. About one-third of the timber was used by plaintiff in error in constructing and repairing its railroad in the territory of Dakota. The balance of the timber and lumber was used by it on its line in Minnesota.

A few tons of hay cut from the grass upon some of the land had been sold by agents and employes, and the proceeds of such sales had been applied in partial payment for their services. Folio 51.

At the time of the purchase plaintiff in error owned and was operating about 1,500 miles of rail-

road, extending through the state of Minnesota into the then territory of Dakota.

In 1885 and 1886 its line had increased in extent, and at the time of the trial it owned and was operating nearly 3,000 miles of railroad, including side tracks.

It is a matter of common knowledge that timber is required for cross-ties, fencing, bridges, station buildings and other buildings, the use of which is necessary and incidental to the operation of a railway.

Two thousand six hundred ties are required per mile. Ties decay and become useless in from six to nine years. It requires to maintain a railroad three thousand miles in length at least one million ties per year, besides the vast amount of lumber required in the maintenance of fences, bridges and buildings.

Plaintiff in error claims that the timber constituted part of the land, and that the purchase of the land for the purpose of acquiring the timber for use in maintaining and operating its railway was within its corporate power, and that the land was exempt from taxation under the provisions and contract contained in its charter.

First. The trial court found, as the fact is, that plaintiff in error was organized under chapter 30 of the general laws of 1878, now constituting section 87 of chapter 34 of the General Statutes, and that it had succeeded to all the property, rights, franchises, immunities, exemptions and privileges at any time possessed by the Minnesota and Pacific Railroad Company and the St. Paul and Pacific Railroad Company,

or either of them, including exemption from taxation as contained in an act of the territorial assembly of the territory of Minnesota, approved May 22nd, 1857, entitled:

> "An act to execute the trust created by an act of congress entitled, 'an act making a grant of land to the territory of Minnesota in alternate sections to aid in the construction of certain railroads in said territory, and granting lands in alternate sections to the state of Alabama to aid in the construction of a certain railroad in said state,' and granting certain lands to railroad companies therein named;"

and that the plaintiff in error had accepted the provisions of said act. That the same became and ever has been obligatory upon the state, and that the contract therein expressed has never been altered, repealed or rescinded, but still remains in full force, and that the said companies and the said plaintiff in error have always complied with the provisions thereof on their part, as alleged in the answer.

See findings 3 to 7 inclusive, fol. 47 to 49.

Second. The taxes assessed became delinquent in 1886. They were assessed upon the lands described in the answer under a claim on the part of the county that the lands were not exempt under the provisions of the contract contained in the charter of plaintiff in error, above referred to.

The law under which the assessment was made is found in chapter 11 of the General Statutes of the state of Minnesota, entitled, "Taxes."

"Section 1. All real and personal property in

this state and all personal property of persons residing therein, the property of corporations now existing or hereafter created, the property of all banks or banking companies now existing or hereafter created, except as hereinafter expressly excepted, is subject to taxation, and such property or the value thereof shall be entered in the list of taxable property for that purpose in the manner prescribed in this act; *Provided, that railroad, insurance and telegraph companies shall be taxed in such manner as now is or may be hereafter fixed by law.*"

The method of taxing real property is as follows:

"Section 6. That all real property in this state subject to taxation shall be listed and assessed every even numbered year with reference to its value, on the first day of May preceding the assessment, and all real estate becoming taxable in intervening years shall be listed and assessed with reference to its value on the first day of May of that year."

Third. The manner of taxing railroads.

By chapter 111 of the laws of 1873, now section 128 of chapter 11 of the General Statutes, it was provided:

"In consideration of an annual payment of a percentum as provided in this section, by the St. Paul, Stillwater and Taylors Falls Railroad Company, the railroad, its appurtenances and appendages, and all other property, estate and effects of said corporation held or used for, in or about the construction, equipment, renewal, repair, maintaining or operating of its railroad, including the lands granted to said company to aid in the construction of said railroad, as also the stock and capital of said company shall be and hereby are forever exempt from all taxation and from all assessments."

"Section 129, same chapter. Any railroad company owning or operating, or which may hereafter own and operate any line or lines of railroad in this state, may by resolution of its board of directors, attested by its secretary, and filed with the secretary of state, accept and become subject to the provisions of this act."

No other special method is provided except as contained in charters of respective railroad companies.

Fourth. Plaintiff in error has not accepted the provisions of section 128. The lands described in the answer are therefore subject to taxation under the provisions of sections 1 and 6 of chapter 11, General Statutes above referred to, unless they are exempt under the provisions of its charter.

Fifth. The lands described in the answer having been in fact assessed pursuant to the provisions of said sections 1 and 6 of said chapter 11, and the tax not having been paid, the county auditor proceeded to file a list of delinquent taxes pursuant to section 70 of said chapter.

"Section 70. On or before the 20th day of June, the county auditor shall file in the office of the clerk of the district court of the county a list of the delinquent taxes, describing each piece or parcel, with the name of the owner and the amount of the taxes delinquent, and shall verify such list by his affidavit that such is a correct list of the taxes delinquent for the year or years therein appearing on real estate in said county. The filing of such list shall have the force and effect of filing a complaint in an action by the county against each piece and parcel of land therein described to enforce payment of tax

and penalties therein appearing against it, and shall be deemed the institution of such action, and the same shall operate as notice of the pendancy of such action."

Plaintiff in error after the filing of such list answered pursuant to section 75.

"Section 75. Any person, company or corporation having any estate right, title or interest in, or lien upon any piece or parcel of land embraced in said list may with twenty days after publication of said notice file in the office of said clerk an answer, verified as pleadings in civil actions, setting forth its defense or objection to the tax."

In its answer plaintiff in error set forth as its defense and objection to the assessment its exemption from taxation under said act of May 22nd, 1857. That it had at all times fully complied with the provisions of said act in respect to a return of gross earnings and payment of a tax of three per centum thereon, and in respect to reports of lands sold or contracted to be sold, and forfeited contracts. "That the said parcels of land and each of them as to which this answer is interposed, were purchased by and conveyed to this respondent long prior to the assessment and levy of the taxes in this proceeding sought to be enforced, and ever since such conveyance all said lands have been and now are owned in fee by this respondent, and that said lands were and each parcel thereof was purchased and ever since such purchase had been and now are held and used by this respondent for railway purposes, and for the maintenance of its lines of rail-

way, and that the same are necessarily so held and used for such purposes by this respondent."

Fol. 5 to 11.

The trial court found that the lands were not exempt.

Pursuant to section 80 of chapter 11 the case was sent to the supreme court of the state for review.

> "Section 80. The judgment which the court shall render shall be final except that upon application by the county or other party against whom the court shall have decided the point raised by any defense or objection, the court may if in its opinion the point is of great public importance or likely to arise frequently, make a brief statement of the facts established bearing on the point, and its decision, and forthwith transmit the same to the clerk of the supreme court, who shall enter the same as a cause pending in said court, and place the same on the term calendar of said court, etc."
>
> Certificate, fol., 3.

The judgment of the trial court was affirmed by the supreme court.

POINT FIRST.

The supreme court of Minnesota did not put its decision upon the ground that there was not a valid contract betwen the state and the company exempting its property from taxation, but upon the ground that the exemption claimed did not attach to the lands described in the answer.

If such lands are within the contract of exemption contained in the company's charter, then the obliga-

tion of that contract was impaired by the assessment, under chapter 11 of the general laws of the state, and the decision of the supreme court holding that the lands were subject to assessment under such laws.

If the exemption exists as contended for by the plaintiff in error, the General Statutes of the state are inoperative so far as its property is concerned.

Railroad Co., v. *Thomas*, 132 U. S., 174.

The supreme court of the state held that the lands were not exempt, because

> "They were not held and appropriated to the proper purposes of the corporation in its business of constructing and operating a railroad." Fol., 25.

> "That the purchase of the lands in question could not be deemed in a proper sense of the word necessary for the prosecution of its enterprise, nor was it such an ordinary appropriation of property to the purposes of the railroad as to come within the reason and scope of the exemption. Such a purchase and use is no more within the contemplated means of accomplishing the purposes of the incorporation, and no more properly incident thereto than would be the purchase of an iron mine and the erection and operation of works for converting the ore into iron, rails and machinery." Fol., 27.

Again:

> "That though the language of the charter was sufficient to include the property in question within the exemption, it is not the purpose of the legislature to exempt such property, it being not necessary for the construction and operation of the road." Fol., 28.

Subsequently, in the case of *St. Paul, Minneapolis*

and Manitoba Railway Company v. *City of St. Paul*, the court say, speaking of the present case:

> "We have held in these cases that the exemption from taxation extends only to such property as may be fairly said to be held and presently used for railroad purposes, and that property not so used, although held with the purpose at some future time of devoting it to such use, is not within the exemption. It was said, however, that this does not mean that the exemption will not under any circumstances apply to property not for the time in actual use, as the word is ordinarily applied; but as some time must necessarily elapse between the date of the acquisition of property and the date at which it can be prepared for and put to actual use for railroad purposes, hence lands purchased in good faith for the purpose of so using them as soon as present plans are fully executed and the process of appropriating them to such use proceeds without unreasonable delay, would be within fair construction of the exemption, although not put to actual use."
>
> 39 Minn. 112.

The lands were purchased in 1882. No timber was cut until 1885. From that time the cutting was continuous, up to the time of the trial, which was in June, 1887 (fol. 13), and the balance of the timber was being cut at the time of the trial.

The answer alleged that the lands were purchased for railway purposes, and that the same were necessarily held and used for such purpose, and the court having found that the lands were purchased on account of their being valuable timber lands as alleged in the answer, and that plaintiff in error had proceeded with due diligence to convert the timber growing on

such land into bridges and lumber for the use of its road (fol. 11, 49), the question is whether the lands described in the answer, of which the standing timber was a part, were exempt?

The contract of exemption as contained in the charter is as follows:

"Section 1. All such persons as shall become stockholders, etc., shall have and enjoy all the powers, privileges, franchises and immunities incident to a corporation, and may acquire by purchase or otherwise, and hold, convey, sell and lease property and estates, either real, personal or mixed. * * * And generally, may do and perform all and singular the acts and matters which shall be necessary and conducive to the well-being of said corporation."

"Section 3. Said corporation shall have the right to enter upon any lands for the purpose of making surveys for right of way, and may use all and singular any lands, streams and material of every kind beyond the width of 200 feet for the location and construction of depots, station grounds and houses, and for the purpose of constructing bridges, dams, embankments, excavations, spoil banks, turn-outs, shops and other buildings necessary for the construction, completing, altering, maintaining, preserving, and complete operation of said railroad."

"Section 15. The property of every person invested in the stock of said company shall be liable to be taken on execution for the payment of his or her debts in such manner as is or may be provided by law, but no tax shall ever be levied on the stock shares of said company, except the yearly payment to be made by said company as herein provided."

"Section 18. In consideration of the grants, privileges and franchises herein conferred on the said Minnesota and Pacific Railroad Company, the said company shall and will, on or before the

first day of March in each year, pay into the treasury of future state three per cent. of the gross earnings of the said railroad for the year ending on the last day of the preceding December, in lieu of all taxes and assessments whatever, and for the purpose of ascertaining said earnings, an accurate account shall be kept, etc. * * * And for securing the territory or state payment of the aforesaid per centum, it is hereby declared that the state shall have a lien upon the railroad of the said company, and upon all other property estate and effects of said company whether real, personal or mixed, and the lien hereby secured shall have precedence of all demands, decrees and judgments against the company.

"The first payment shall be made on the first day of March, after 50 miles of said railroad shall be completed, and such payment shall be in lieu of all taxes and in full of all claims of the territory or state for the grant hereby made, and in consideration of such actual payment the said company shall be forever exempt from all assessments and taxes whatever by the territory, or state which shall succeed the territory, or by any county, city, town, village or other municipal authorities in the territory or state, upon all stock in the said Minnesota and Pacific Railroad Company, whether belonging to said company or to individuals, and upon all its franchises or estate, real, personal or mixed held by said company; and said land granted by said act of congress hereby authorized to be conveyed to the said Minnesota and Pacific Railroad Company shall be exempt from all taxation till sold and conveyed by said company."

"Section 20. Said Minnesota and Pacific Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this territory, or of the future state, or by other parties, which shall be conveyed to it by this act, or by deed, gift or purchase, or by operation of law, and may mortgage, pledge, sell and convey the same, or

otherwise dispose of all their right, title, interest, claim or demand of, in and to any such lands so granted to said company, and of any other estate, real, personal or mixed of which said company may be seized or which it may acquire subsequently thereto in such manner and on such terms as the directors may think proper."

"Section 22. All the property which the said Minnesota and Pacific Railroad Company is authorized to take, possess, hold, use or enjoy, by making payment therefor as in this act provided, is hereby declared to be taken for public use so soon as the said company shall take, possess, hold or use the same."

"Section 28. This act is hereby declared to be a public act and shall be favorably construed to effect the purposes thereby intended."

There is no reserved right to alter, amend or repeal.

Under section 1 and section 3, plaintiff in error is empowered to purchase land for right of way, station grounds, embankments, shops and buildings, for maintaining, preserving and complete operation of its railroad, and to do all acts necessary and incident to, and conductive to the well being of the corporation.

Section 20 should be construed as conferring upon it legal power and more extended right to acquire land than is contemplated by sections 1 and 3. Under section 20 it may take and *hold any lands granted* by the government, or by the state, or by other parties, or by deed, gift, purchase or by operation of law. Such land may be appropriated to the use and for the purposes of the company in constructing and maintaining its railroad. Further than this the only use that can be made of it is to mortgage, pledge, sell or

convey it in such manner as the directors may think proper.

Construing sections 1, 3 and 20 in connection with section 22, which provides that all property which the company is authorized to take, use or enjoy, by making payment therefor, is declared to be taken for a public use, it is obvious that the exemption from taxation is as broad and extensive as the right to acquire and hold property.

POINT SECOND.

Unless land is acquired *ultra vires*, or after being lawfully acquired is devoted to uses *ultra vires* it is exempt from taxation.

St. Anna's Asylum for the relief of destitute females and helpless children had power under its charter to take, purchase and possess all kinds of property whether real or personal, by gift, grant, sale, bequest, or by any other mode of transfer whatsoever, and to sell or convey the same for the furtherance of the object of the incorporation and in accordance with the conditions of the charter.

Its property was exempt, "from all taxation either by the state, parish or city in which it is situated."

The proof showed that under its charter it erected an asylum and had fulfilled the objects of its organization. It acquired premises upon which a cotton-

press had been erected, and which premises were assessed at $90,000. It appeared that no inmates were kept upon the premises. That the revenues of the cotton-press on which the assessment was made were applied to the keeping and maintaining the objects of charity mentioned in the act of incorporation, and that it relied on the rents of the property to enable it to carry on its work. The corporation resisted the payment of the tax, and in sustaining its claim of exemption the court say:

> "The language of the exemption is so explicit and so broad, and comes in after so many allusions to property which it is supposed the corporation might acquire, other than that which would be directly used for food and shelter to the destitute and helpless persons under its care, that no doubt can be entertained as to its literal application to all the property of the association which it would be lawful and proper for it to posses. * * * *
>
> "Undoubtedly, if the corporation should acquire property not needed or used for carrying on the institution, it would be an act outside of the objects and purposes of the charter, and *ultra vires*; and, as to such property, it could not, in its own wrong, justly claim the benefit of the exemption. But the property in question is not obnoxious to this objection; it directly contributes to the support of the institution, and is held for that purpose alone."

Asylum v. *New Orleans*, 105 U. S., 362.

See, *Home of the Friendless* v. *Rouse*, 8 Wall., 430.

In *Washington University* v. *Rouse*, 8 Wall. 440, the court say:

> "It is urged that the corporation, as there is no limit to its right of acquisition, may acquire

property beyond its legitimate wants, and in this way abuse the favor of the legislature, and in the end become dangerous on account of its wealth and influence. It would seem that this apprehension is more imaginary than real, for the security against this course of action is to be found in the nature of the object for which the corporation was created. * * * Should a state of case in the future arise, showing that the corporation has pursued a different line of conduct, it will be time enough then to determine the rights of the parties under this altered condition of things."

Hamline University, in the state of Minnesota, was incorporated under chapter 43 of the laws of the territory of Minnesota, 1854, which authorized the corporation to acquire ground and convey property, real, personal or mixed, in all lawful ways, provided annual income shall not exceed $60,000.

The act further provides:

"That all corporation property belonging to the institution, both real and personal, is and shall be free from taxation."

The court held, following *First Div. St. P. & P. R. R.* v. *Parcher*, 14 Minn. 297, that the legislature of the territory had power to grant such exemption. That it was binding upon the state, and that the exemption covered all the property which the corporation had a right to acquire. Upon this point the court say:

"Had it been intended to limit the exemption to property directly used by the university, different language would have been used. The language of the exemption is so broad, and coming as it does after numerous allusions to property which the corporation might acquire, other

than that which would be directly used by the university, there can be no doubt of its application to all property of the corporation which it might lawfully acquire and hold."

48 N. W. 1119.

The charter of the Wilmington Railroad Company provided that the property of the company and the shares therein should be exempt from any public charge, tax or debt. The company had no authority to acquire property other than such as was incident to its business. A tax was imposed upon the franchises and rolling stock of the company.

The court in holding that the tax was not a lien say:

"It is true that when a corporation claims an exemption from taxation, it must show that the power to tax has been clearly relinquished by the state and if there be a reasonable doubt about this having been done, that doubt must be solved in favor of the state. If, however the contract is plain and unambiguous and the meaning of the parties to it can be clearly ascertained, it is the duty of the court to give effect to it, the same as if it were a contract between private persons, without regard to its supposed injurious effects upon the public interests."

Wilmington R. R. v. *Reid*, 13 Wall., [illegible] 264.

Under a charter which provided for the payment of a given amount of tax, which should take the place and be in full of all taxation of every name and kind upon its road, or other property belonging to the company, or the stock held by individuals therein, and that it should not be lawful to levy or assess thereon any further assessment or tax for any purpose whatever, the court said:

"This language is too plain and unequivocal to admit of doubt or argument as to the intention of the legislature. The law absolutely and positively exempts the road and property belonging to the corporation from all taxes and assessments of every nature. A very elaborate argument has been made for the purpose of showing that this was not the precise intention and object of the law. That notwithstanding the clear manner in which the legislature has expressed its intention, it is possible to hold that the property belonging to the corporation is liable to assessment. To give the law any such interpretation, would be doing violence to one of the most familiar elementary rules of construction. When the words of the act are clear and precise there can be no reason for refusing to admit the meaning of the words and go elsewhere in search of conjecture in order to restrict or extend the act. To do this would be to evade the law, and to adopt a method fraught with the most dangerous consequences; since there is no law however definite and clear in its language which might not by such a rule of interpretation be defeated.

Brightman v. *Kirner*, 22 Wis., 53.

The charter of the Patterson and Hudson River R. R. Company provided for the payment of certain taxes to the state, and then, "That no further or other tax or impost should be levied or assessed on said company."

This court held that this exempted not only the franchises and privileges of the company, but the company generally and all its property from taxation for county, township, or other purposes.

State v. *Berry et al*, 17 N. J. Law, 80.

Camden & Amboy R. R., 18 N. J. Law, 71.

The Elizabeth Library Association was by its charter authorized to hold by donation, purchase or otherwise, and to lease or convey real and personal estate for the purpose of carrying out its object. The charter provided that no state, county or city or other public assessment or charge should at any time be levied or imposed upon such association, or upon the stock or estate, real or personal, which should become vested in it.

The association erected a building. The front part of the lower story was occupied by two stores, which were rented; the upper part by a hall, let out for parties, balls, etc., and the room in the third story for a Free Mason's lodge.

The court below held that the association was liable to taxation. The court of errors reversed the judgment of the court below. Referring to the case of *State* v. *Mansfield*, 23 N. J. 510, the court of errors say:

> "The charter in those cases exempts the companies from taxation in very general terms, and it is held that the property acquired which was not necessary for the purposes contemplated, but only convenient for their business, was not exempt.
>
> "In charter now under consideration the exemption is much more full and explicit. All the stock and estate, real or personal which should become vested in the association, are in express terms declared to be exempt. However impolitic we may deem such an exemption, and however disposed, as we certainly are, to discountenance the extension of chartered powers by implication, this language is too plain to be mistaken. The obvious intention is not only to authorize the erection of a library building and

exempt it from taxation, but to allow the association to acquire and hold real estate and personal estate, including stocks, and to rent their real estate and derive a revenue from it, all of which is by its charter declared to be free from taxation."

Library Association v. *Leester*, 29 N. J., 541.

POINT THIRD.

The land was acquired in good faith and held for railway purposes. The company proceeded with due diligence to convert the timber growing on the land into bridges and cross-ties for use in its road. Since the timber was removed the land has been sold, or it will be sold, and the proceeds applied to the use of the company.

It commenced to cut the timber in 1885. The bulk of it was cut in 1886. The balance was being cut at the time of the trial.

Fol. 13 and 51.

"The land when purchased was covered with timber which made it profitable for the defendant to purchase it. The company could thus get timber for railway purposes cheaper than in any other way."

Fol. 19.

In the case of *Camden R. R. Co.* v. *Mansfield*, 23 N. J. 510, the court held that the necessary limitation of exemption from taxation was where "necessity

ends and convenience begins." This case is cited in,

Bank v. *Tennessee*, 104 U. S. 493.

This rule was subsequently modified.

R. R. Co. v. *Hancock*, 35 N. J. 537.

It is plainly not applicable under the provisions of the charter in question.

An immediate necessity for use of timber did exist when the land was purchased in 1882. The supply on hand or obtained elsewhere we may assume, rendered it unnecessary to cut the timber on this land until 1885, then, the necessity was such as to require continuous cutting until all the timber was removed.

If instead of purchasing the land for the purpose of obtaining timber and in anticipation of the necessity of the near future, a purchase had been made in 1882 of a quantity of timber, equal to the amount growing on the land in question, such purchase would have been clearly within the limit of corporate right and in the exercise of an intelligent business judgment, and such timber when purchased would have been exempt from taxation.

A corporation has implied authority to conduct its business upon liberal principles. It may generally do whatever an intellegent man would do under similar circumstances. It may adapt itself to changes of time and circumstances; it may avail itself of new appliances and inventions which are needed or convenient to a successful prosecution of its business.

Re British Cork Co., L. R., 1 Eq., 231.

Rake Co. v. *Marsh*, 6 Fish. Pat. Cases, 387.

Selden v. *Canal Co.*, 29 N. Y. 634.

Clark v. *Farrington*, 11 Wis. 321.

In the following cases the court say:

"The company may very properly acquire more land for its tracks and depots than required for its present use. It is generally wise to do so, and if it holds such land until required by the objects of its charter, it holds it free from taxation according to the letter and spirit of the exemption."

Cook v. *Camden & Burlington R. R.*, 33 N. J. 474.

"It is true that the property was not in actual use when the assessment was made, but there was no indication of any abandonment of the purpose to use it for a reservoir. On the contary it was held for that necessary purpose and without being used for any other. The land was not held for speculation, or to meet a remote contingency, or for mere incidental convenience."

Water Commissioners v. *Gaffney*, 34 N. J. 131.

"A railroad company in 1859 bought a farm of 110 acres and built to it a branch on their main line, about one and three-quarters miles in length. The farm was bought for the gravel which was on it and which was required for the ballasting of their road and for maintaining it and keeping it in repair. The branch was built to transport the gravel to the main line cheaply."

The property was assessed and the assessment was affirmed by the supreme court.

The court of errors, in reversing the judgment of the supreme court say:

"In the case of *State* v. *Mansfield*, the term 'necessary' is put in sharp contrast to the word 'convenient,' but this I think is clearly a mistake. The word 'necessary' in this case is so far from being *contra-distinguished* from the word 'convenient' that the former term contains much that in strictness is embraced in the latter term.

"In acquiring this land for the gravel, it would seem they did that only which they had a plain right to do. Indeed such an operation seems to

approximate to an act of almost pure necessity. Nor does the branch road connecting this property with the main road, appear to me to be susceptible to the application of a different rule.

"The purchase of so much of this farm as consists of beds of gravel and the erection of this branch road, for the use in question, are acts, which in a legal sense, were necessary to effect the objects for which plaintiffs in error were incorporated.

The test of the court below to ascertain the immunity of corporations from taxation by force of exempting clauses, similar to the one under consideration, appear to me entirely inadmissible. It is supposed that such an exemption never obtained except in respect to property which the company had by condemnation. This would subject to taxation almost all the appendages of the company, such as depots, car-houses, wood yards, etc., for it will be found in most charters that the mere privilege to purchase property is conferred and that it cannot be taken *in invitum.*"

N. J. R. R. Co. v. *Hancock*, 35, N. J., 537.

The charter of a railroad company provided:

"That said company may purchase, have and hold lands necessary for said road or the appurtenances thereof for the erection of storehouses, houses for its officers, or for procuring stone or other material necessary to the construction of the road, or for effecting transportation thereon, and for no other purpose."

The court say:

"In connection with this section, in ascertaining the powers conferred by the charter of the company, the fifth section of the act should be considered, in which it is declared that the company shall be capable in law or equity of purchasing, holding, selling, leasing and conveying estates, real, personal or mixed, acquiring the

same by gift or devise, so far as shall be necessary for the purposes embraced within the scope, object and intent of this charter, and no further.

"In the absence of any evidence with respect to the use made of the land after its purchase by the company, it is to be presumed that the land purchased, was acquired for the purposes authorized by the charter. But it is not necessary that the plaintiff should resort to such a presumption in this case, for it was in evidence that the company bought the land in question in 1856, and held it for twenty-five years. That its road ran over the land, and that it was used by the company for the purpose of cutting wood for fuel and cross-ties. These were materials certainly essential to the purpose for which the company was chartered. The cross-ties were necessary to the construction of the road and its repairs, and the fuel was equally necessary after the road was constructed in effecting transportation, so that the purchase of the land by the company was strictly within the power conferred by the charter, and having used it for the purpose for which it was purchased, it had the right under the fifth section of the act to sell it when it was no longer needed for that purpose."

94 N. C., 37.

55 Am. Reports, 594.

The consideration which influence courts in passing upon cases of this character were stated clearly by Lord Romilly in *Lyde* v. *Eastern Bengal Ry., Co.*

In that case a motion was made for an injunction to restrain the officers of a railway company from operating a steamboat line and applying the company's funds to that purpose.

The defendant insisted that the use of a steamboat was warranted by the nature of the company's business, and as an illustration of the manner in which

a railway company might legitimately embark in projects apparently inconsistent with its means and objects, it was said that a railway company might properly work a coal mine, if by so doing it could obtain coals more cheaply than by purchasing them, and that it would be foolish in such case to prevent the company from obtaining a profit by the sale of such coals as were raised but not required for the use of the company. The master of the rolls said:

> "The answer to this argument appears to me to depend upon the facts of each particular case. If, in truth, the real object of the colliery was to supply the railway with cheaper coals, it would be proper for it to receive the accidental profit of selling the coals to others; but if the principal object of the colliery was to undertake the business of raising and selling coals, then it would be a perversion of the funds of the company, and a scheme which ought not to be permitted, however profitable it might appear to be."

Lyde v. *Eastern Bengal Ry. Co.*, 36 Beav. 1617.
Mayor of Norwich v. *Norfolk Ry. Co.*, 4 El. & Bl. 397, 415, 443.

POINT FOURTH.

The land was lawfully acquired by plaintiff in error for the purposes of its railroad, if not for its immediate use.

The distinction between "use" and "purpose" is clearly stated in *University* v. *People*, 99 U. S. 309. In this case the court say:

"The first observation we have to make is that

the constitution does not say property used for schools, as the opinion of the court below implies. Neither the important word "use" or "schools" is found in the instrument on the subject. The makers of the constitution used other language because they had another meaning, and did not use that because they did not mean that. They said that the legislature might exempt from taxation such property as they deemed necessary for school purposes—not for the use of schools, but for school purposes. The distinction is, we think, very broad between property contributing to the purposes of a school and that which is directly or immediately subjected to use in a school. The purposes of the school, and the school, are not identical. The purpose of a college or university is to give youth education. The money which comes from the sale of land, or land dedicated to that object, aids this purpose. Land so held and leased is held for school purposes in the fullest and clearest sense."

If the land had been purchased by plaintiff in error and appropriated to uses or purposes inconsistent with its charter, it could not well claim the benefit of the exemption, because such acquisition and use would be in violation of the contract between *it and the state*.

POINT FIFTH.

The cases cited in the opinion of the supreme court of the state arose under general laws or charters unlike that of plaintiff in error.

In *Bank* v. *Tennessee*, 104 U. S. 493, the charter of the bank provided that it might "purchase and hold a lot of ground for the use of the institution as a place

of business, and at pleasure sell or exchange the same; and may hold such real and personal property and estate as may be conveyed to it to secure debts due the institution, and may sell and convey the same."

The charter also provided that the bank should pay to the state an annual tax of one-half of one per cent. on each share of the capital stock, which should be in lieu of all other taxes.

It purchased a parcel of land, erected a three-story brick building, but used only the first floor and leased the cellar and the balance of the building. It made loans, and subsequently acquired title to lands given as security. A tax was imposed upon the bank and the lots.

The court say, speaking of the claim to exemption:

> "It certainly would not be pretended that a corporation, by turning its whole capital into real property and engaging in real estate business, would then by force of the charter escape liability to taxation for it under the general laws, but if the exemption could not be carried to that extent, it is difficult to fix any limit to the amount of real property which it may hold thus exempt unless we take that prescribed by the charter. In our judgment, the limit of exemption cannot be extended to property used beyond the actual wants of the corporation in carrying out the purpose of its creation. As well observed by the supreme court of the state, 'the contract of exemption beyond the extent prescribed ceased when taxable property was held for other purposes.'"

County of Ramsey v. *C. M. & St. P. Ry. Co.*, 33 Minn. 537, arose under sections 128 and 129, being the Taylors Falls act above referred to.

In this case a parcel of land that had been used for a passenger depot was abandoned in July, 1881, and it had remained substantially unoccupied for any purpose up to the time of the assessment and trial in 1885.

The language of such statute exempts only property held or used for, in, or about the construction, repairing, maintaining, etc., and the court held that this statute contemplated a present use, and not property which was held for a probable future and contingent use.

In *Swigert* v. *Auditor*, 119 Ill. 83, section 22 of the charter of the Illinois Central Railway Company, after providing for a limited state tax upon its stock, property and assets, declares, "The said corporation is hereby exempt from all taxation of every kind, except as herein provided for."

Held, that this broad language should not be construed alone, but considered with reference to and in connection with the objects and purposes of the whole act, and, as the company was authorized to acquire and use all such real and other property as might be necessary for the construction of its railroad and stations and such other accommodations as might be necessary to accomplish the objects of its incorporation, it was held that the property intended to be exempted was such as that described, being such as was necessary for the construction and operation of its railway, and that an elevator of such company, used exclusively by it in receiving grain for shipment or for storing it after shipment without any additional charge, would be clearly exempt, but that an elevator

erected on its right of way and leased to some private parties who received tolls and compensation for all grain stored, was not exempt.

Illinois Central Railway Co. v. *Irvin*, 72 Ill. 452, arose under the same charter.

In *Inhabitants of Worcester* v. *Western R. R.*, 4 Metcalf, 564, claim was made that the railroad was a public easement intended for public use, and that the works necessary to such public easement were public works, and as such exempted from taxation.

The court say:

> "Such, we believe, has been the uniform practice in regard to bridges, turnpikes and highways, and also in regard to other public buildings and structures of a like kind, as state houses, forts and arsenals, court houses, jails, town houses, school houses and generally to houses appropriated specially to public use. The general principle is not denied in the present case, but the question is as to the extent and limit of this exemption from taxation. This limit, we think, is to be ascertained by considering the extent of the public easement intended to be acquired, secured and maintained, and the franchises granted to the proprietors to enable them to accomplish the proposed end."
>
> It was held: "That the company was not liable to be taxed for land not exceeding five rods in width over which it was authorized to lay out its road, nor for buildings and structures erected thereon if they were reasonably incident to the support of the road or to its proper and convenient use for the carriage of persons and property."

IN CONCLUSION.

In construing the provisions of the charter a liberal rule of intepretation should be adopted to effectuate the intention of the legislature.

It is a matter of notoriety and history that in granting the charter the legislature of the territory of Minnesota regarded the completion of the work as a great object tending to promote the future wealth and prosperity of the territory and state.

As an encouragement, it was willing to confer every immunity, privilege and exemption which could tend to promote the construction of a railroad.

The charter, and especially that clause of it exempting property from taxation was considered in the case of *Parcher* v. *First Divison St. Paul & Pacific R. R. Co.*, 14 Minn. 222.

The court say:

> "In addition to what was there said, it is entirely proper for us to refer to the state of things existing when the policy to be adopted was under consideration by the legislature. The state was then almost a wilderness. Its population was small and sparce; its capital limited; its business depressed; its resources undeveloped. There was not a mile of railroad within its borders. An outlet by rail for the products of the state was a matter of prime and pressing necessity. The inducements which we were able to hold out to secure this outlet and the construction of needed lines of railway consisted rather in what the state was to be than what it was. The country at large had hardly recovered from the financial revulsion of 1856-7. How soon railroads in this state would prove remunerative to their owners, as well as how soon the lands would sell, were matters of conjecture and experiment, and not-

withstanding repeated and continued tenders of all the roads, lands and franchises, together with the privileges and exemptions in regard to taxation, it was not until the summer of 1862 that the first ten miles of railroad were put in operation in this state.

"These facts are not without weight in considering that the grant of land without the exemption from taxation would not probably have induced capital to undertake the construction of roads, especially when we take into account the proverbial high rates of taxation in newly settled communities."

In 1882 plaintiff in error was a growing corporation. It had then constructed about fifteen hundred miles of railway, and was engaged in constructing extensions to its line, which have since been completed, forming a continuous line from St. Paul to Great Falls, in the state of Montana.

Timber for cross-ties, for bridges and for fences was necessary to the construction, and is necessary to the maintenance of its railroad. In making provisions for the construction and maintenance of its line it was not and is not restricted to means either usual or necessary. It had a right to select means convenient and adapted to that end, though unusual and not absolutely necessary. It had a right in the exercise and enjoyment of its corporate powers and privileges to exercise a wise foresight in the purchase of property and in acquiring means to accomplish the end it had in view.

Was it bound to purchase from month to month and from year to year only such timber and material as was necessary for present and immediate use?

Clearly it had a right to purchase timber in quantities largely in excess of a present demand, and to meet the demands of the near future. It could have purchased logs and have sawed them into ties, boards and lumber.

It has erected expensive and extensive shops in which it repairs its locomotives and cars, and also shops in which it manufactures cars.

It purchases from year to year a large amount of lumber to be used in constructing cars, fences, bridges and buildings, and in maintaining them.

If it may purchase timber for immediate and future use, may it not also purchase the land upon which the timber is growing for the purpose of obtaining the timber?

It owns or controls coal mines from which it obtains coal used in the operation of nearly two thousand miles of its railway. Its charter gives it the right to purchase and hold land. Also to take land by gift from the government, from the state, or from individuals. If the state or individuals had given it 35,000 acres of land, would not such land be exempt from taxation under the provisions of the charter? Would not the land have been held for the purposes of the railroad, either by way of utilizing the timber growing upon it, or by appropriating the proceeds of the sale of the land to the purchase of timber, or to other uses incident to the construction and maintenance of the railroad?

It is difficult to draw any material distinction between the right to purchase land covered with standing timber for the purpose of obtaining the timber for

railroad use, and the right to purchase timber already cut.

The timber at the time of the purchase was real estate. The land upon which the timber was growing was therefore purchased for the uses and purposes of the company, and was devoted to its use within a reasonable time after it was acquired.

M. D. GROVER,

Counsel for Plaintiff in Error.

SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, A. D., 1888.

THE COUNTY OF TODD,

Defendant in Error,

vs.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY,

Plaintiff in Error.

BRIEF OF DEFENDANT IN ERROR UPON MOTION TO DISMISS.

M. D. GROVER and S. L. CAMPBELL,
Attorneys for Plaintiff in Error.

E. B. WOOD and MOSES E. CLAPP,
Attorneys for Defendants in Error.

SUPREME COURT.

OF THE UNITED STATES.

1

THE COUNTY OF TODD.

Defendant in Error.

vs.

THE ST. PAUL, MINEAPOLIS & MANITOBA RAILWAY COMPANY,

Plaintiff in Error.

2

BRIEF OF DEFENDANT IN ERROR, UPON MOTION TO DISMISS.

STATEMENT OF CASE.

These proceedings grow out of an attempt on the part of the plaintiff in error to resist the collection of taxes upon certain lands in the State of Minnesota owned by the plaintff in error. The lands in question were purchased by the plaintiff in error and claimed to be exempt from taxation under the laws of the State of Minnesota. The exemption is claimed under and by virtue of the charter granted the plaintiff in error by the State of Minnesota, and without detailing the history of the legislation and judicial proceedings which finally resulted in the organization of the plaintiff in error as a corporation, it is sufficient to say that by its charter

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4 the plaintiff in error became possessed of a land grant, and in consideration of the annual payment of a certain percentage of its earnings it is granted an exemption from taxation as follows: "And in consideration of such annual payments the said company shall be forever exempt from all assessments and taxes whatever by the Territory, or State which shall succeed the Territory, or by any county, city, town, village or other municipal authority in the Territory or State, upon all stock whether belonging to said compay or to indivi-
5 duals, and upon all its franchises or estate, real, personal, or mixed, held by said company, and the land granted to said company by an act of Congress, and authorized to be conveyed to the said company shall be exempt from all taxation until sold and conveyed by said company." (See folio 28 of case hereto attached.) The land in question is no part of the land grant of the plaintiff in error, but was purchased by the plaintiff in error in 1882 for the purpose as claimed of securing territory from which to obtain ties and timber to be
6 used in the construction of its railroad.

It is conceded for the purpose of this case that the company at all times have paid the percentum tax in consideration of the payment of which their exemption was granted.

Upon the trial of this cause in district court it was held that the lands in question were not exempt from taxation? (See folio 58, annexed case.) The case having been appealed to the Supreme Court of Minnesota, it was again held that the lands were not exempt
7 from taxation (See folio 104, annexed case.), whereupon the case was removed to this court by a writ of error.

ARGUMENT.

It will be seen from the foregoing statement, and from the annexed case, that the only issue involved in the consideration of this case in the District Court in the State of Minnesota, and in the Supreme Court of said State, was whether or not the exemption granted the plaintiff in error covered the lands in ques-

tion. In other words, this cause presented to the Supreme Court of Minnesota the duty of construing a contract that had been entered into between the State and the plaintiff in error, did not in any manner involve the construction of a contract that had been entered into between the State and the plaintiff in error, and did not in any manner involve the construction of any law passed subsequent to the law which formed the contract between the State and the railroad company. It is now urged by the defendant in error that no Federal question is raised by the record in this case, and it has been held in numerous cases in this court that unless the claim which is defeated rests upon some treaty or statute of the United States, or is claimed under the Constitution or laws of the United States, this court cannot review a decision of the State court.

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Brooks vs. State of Missouri, 8th Supreme Court Reporter, 443.
Spies vs. Illinois, 123 United States, 131, 181.
French vs. Hopkins, 8th Supreme Court Reporter, 589.
Phillips vs. Mound City Land and Water Association, Id. 657.
Kennedy vs. Hart, 7th Howard, 586, 593.

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Those cases all hold that in order to raise a Federal question it is necessary that the right be claimed under some treaty, statute of the United States or Constitution, and must appear by the record; and the failure of the record to show that such question is involved cannot be cured by a certificate of the Judge.

11

Felix vs Scharnweber. 8th Supreme Court Reporter, 759.

The case of New Orleans Water Works vs. Louisiana Sugar Refining Co., 8th Supreme Court Reporter, 741, opinion filed March 19th, 1888, and directly in point, is a review of the subject under consideration and the latest decision of this court upon this question, and in this case the court expressly holds that "where the right claimed was not conferred by the contract, this court has no jurisdiction." That was the only question in-

volved in the case at bar when decided by the courts of the State of Minnesota. It was claimed, as appears by the record here, that the general exemption granted to the plaintiff in error covered all property which the plaintiff in error might acquire, but the Supreme Court of Minnesota held that this construction could not be maintained, and that the land in question was taxable, not because of any law of Minnesota passed subsequent to the contract, but because by the terms of the contract itself it was not included within the exemption, and we respectfully submit, in view of the authorities cited, that the motion to dismiss should be granted upon the ground that this court has no jurisdiction, as no Federal question is involved in this case.

E. B. WOOD and
MOSES E. CLAPP,
Attorneys for Defendant in Error.

CASE.

STATE OF MINNESOTA, County of Todd. } DISTRICT COURT, Seventh Judicial District.

In the matter of proceedings to enforce payment of the taxes on real estate remaining delinquent on the first Monday in January, 1886, for the County of Todd, State of Minnesota.

To the Supreme Court of the State of Minnesota:

The district court having sustained the taxes sought to be enforced in these proceedings against the lands hereinafter described, and the St. Paul, Minneapolis & Manitoba Railway Company, defendants herein, having made application for leave to present its objections to said taxes to the supreme court.

And it appearing to said district court that the points 16
raised by defendant's answer are of great public importance and likely to arise frequently, therefore the district court makes the following statement of facts established, bearing upon points raised, and its decision in the case, for the information of the supreme court on the hearing of said objections. A list of taxes on real estate delinquent on the first Monday of January, 1886, for said county of Todd, was duly filed in the office of the clerk of said district court for said county of Todd, in which list the several parcels of land here- 17
inafter mentioned and described appear, with the taxes levied and assessed against the same for the year 1884, to which levy and assessment the St. Paul, Minneapolis & Manitoba Railway Company appears and files its answer and objections, which is as follows:

(Title of Case.)

The St. Paul, Minneapolis & Manitoba Railway Company, which is a corporation for railway purposes, duly 18
organized under title 1 of chapter 34 of the General Statutes, and the acts amendatory thereof, and especially an act entitled "An act to amend title 1 of chapter 34, of the General Statutes relating to corporations," being chapter 30 of the General Laws of 1876, and which is, and at all times since June, 1879, has been, and now is, the owner and in possession of and engaged in operating all the lines of railroad hereinafter mentioned, for its answer and objection and defense to the taxes sought to be enforced against each 19
and every of the parcels of land which, with the names of the owners thereof, are described and stated in the list of delinquent taxes filed and published in the above entitled proceedings, as follows:

Respondent further alleges as follows:

That by purchase thereof at mortgage foreclosure sales in May and June, 1879, this respondent became, and still is, the owner in fee of all that part of the lines of the Minnesota & Pacific Railroad Company and the St. Paul & Pacific Railroad Company, and the First

Division of the St. Paul & Pacific Railroad Company, extending from St. Paul, in the county of Ramsey, to St. Vincent, in the county of Kittson, in this State, and formerly known as the main and branch lines of said Minnesota & Pacific Railroad Company, and St. Paul & Pacific Railroad Company, and of all the property, rights, franchises, immunities, exemptions and privileges at any time possessed by said companies, or either of them, including the exemption from ordinary taxation hereinafter mentioned, pertaining to said line of railroad; which said purchase by this respondent, and its right and title to all said line of railroad, property, rights, franchises, immunities, exemptions and privileges, were fully confirmed to this respondent by an act of the Legislature of this State, approved March 7, 1881, entitled "An act confirming the organization and certain purchases of the St. Paul, Minneapolis & Manitoba Railway Company, and in relation to the charter, powers, franchises and property of said company."

That the said Minnesota & Pacific Railroad Company was created a corporation by an act of the Legislative Assembly of the Territory of Minnesota, approved May 22, 1857, entitled, "An act to execute the trust created by an act of Congress entitled, 'An act making a grant of land to the Territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State,' and granting certain lands to railroad companies therein named, and by the same act the said company was empowered to construct the lines of railroad therein named, of which lines the said main and branch lines, and the St. Vincent extension line of the St. Paul & Pacific Railroad Company has always been a portion. And by said act of May 12, 1857, there was granted to said Minnesota & Pacific Railroad Company all the interest of the Territory and State of Minnesota in the lands granted to said Territory, to aid in the construc-

tion of said lines by the act of Congress mentioned in 24
the title of said act, which act of Congress was approved
March 3, 1857.

That in and by said act of May 22, 1857, it was provided (in the eighteenth section thereof) as follows in regard to said Minnesota & Pacific Railroad Company:

"The said company shall and will, on or before the first day of March in each year, pay into the treasury of the territory or future state three per centum of the gross earnings of the said railroad for the year ending on the last day of the preceding December, in lieu of 25
all taxes and assessments whatever."

And in and by said section it was further provided as follows:

"And for securing to the territory or state the payment of the aforesaid per centum, it is hereby declared that the state shall have a lien upon the railroads of the said company, and upon all other property, estate and effects of the said company, whether real, personal or mixed; and the lien hereby secured shall take and have precedence of all demands, decrees and judgments 26
against the said company."

And in and by said section it was further provided as follows:

"And in consideration of such annual payments, the said company shall be forever exempt from all assessments and taxes whatever by the territory, or state which shall succeed the territory, or by any county, city, town, village or other municipal authority in the territory or state, upon all stock in the said Minnesota & Pacifiic Railroad Company, whether belonging to said 27
company or to individuals, and upon all its franchises or estate, real, personal or mixed, held by said company; and said land granted by said act of Congress hereby authorized to be conveyed to the said Minnesota & Pacific Railroad Company shall be exempt from all taxation till sold and conveyed by said company."

That thereafter all and singular the rights, privileges, franchises, lands, property and interests of said Minnesota & Pacific Railroad Company became and were

vested in the state of Minnesota, and were, by a public law of the state, entitled "An act to facilitate the construction of the Minnesota & Pacific railroad, and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, regranted by said State to said St. Paul & Pacific Railroad Company.

That in the year 1864, by proceedings duly had pursuant to the provisions of a public law of this state, entitled "An act to amend the charter of the St. Paul & Pacific Railroad Company," approved February 6, 1864, the said first division of the St. Paul & Pacific Railroad Company was duly organized as a corporation, and became the owner of the said main and branch lines, and of all the property, rights, franchises, immunities and exemptions of said Minnesota & Pacific Railroad Company and said St. Paul & Pacific Railroad Company, in any way relating to said lines. Which said organization of said first division of the St. Paul & Pacific Railroad Company, and its title to said lines of railroad, lands, franchises, immunities and exemptions were duly confirmed in said first division of the St. Paul & Pacific Railroad Company by a public law of this State, approved February 6, 1866, entitled "An act to legalize and confirm the organization, acts and proceedings of the first division of the St. Paul & Pacific Railroad Company, and in relation to the character and powers of said company."

That the said companies and this respondent have at all times fully complied with all the provisions of law in respect to returns of gross earnings and payment of a tax of three per centum thereon in lieu of all other taxes, and in respect to reports of lands sold, or contracted to be sold, and forfeited contracts.

That the said parcels of land and each of them as to which this answer is interposed were purchased by and conveyed to this respondent long prior to the assessment or levy of any of the taxes of this proceeding sought to be enforced, and ever since such conveyance all said lands have been and now are owned in fee by this respondent; and that said lands were and each parcel thereof was purchased and ever since said pur-

chase have been and now is held and used by this re- 32
spondent for railway purposes, and for the maintainance of its lines of railway, and that the same are necessarily so held and used for such purposes by this respondent.

Wherefore, this respondent says that said parcels of land are, and each of them is, exempt from the taxes in this proceeding sought to be enforced against the same respectively, and prays judgment that said parcels of land, and each of them, be wholly discharged from said taxes. 33

W. E. SMITH,

Attorney for St. Paul, Minneapolis & Manitoba Railway Company, Respondent, St. Paul, Minn.

S. L. CAMPBELL,

Of Counsel.

Answer duly verified.

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The issues raised by the answer in these proceedings came on for hearing before the court on the 6th day of June, 1887, at Long Prairie, in the county of Todd and after hearing the evidence and the argument of counsel and said court having taken time to consider the case, the court filed its decision as follows:

STATE OF MINNESOTA,	)	DISTRICT COURT,
County of Todd.	)	Seventh Judicial District.

35

In the matter of proceedings to enforce payment of taxes, etc., Todd Co. vs. The St. Paul, Minneapolis & Manitoba Railway.

The above entitled action came on for trial in the above named court before the Hons. L. W. Collins and L. L. Baxter, judges thereof, at Long Prairie, in the

36 above named county of Todd, on the 6th day of June, 1887. E. B. Wood and M. E. Clapp, Attorney General, appearing as attorneys for Todd county, and M. D. Grover for the defendants. And from the testimony introduced at the trial, and the stipulation of the parties as to the facts in the action, after argument by counsel for the respective parties, we made and filed the following findings of fact and conclusions of law:

FINDINGS OF FACT.

37 I. That the defendant is a corporation duly organized under an act entitled "An act to amend title 1 of chapter 34 of the general statutes of Minnesota relating to corporations, being chapter 30 of the General Laws of 1878, and the acts amendatory thereof," and that the said railway company now is and at all times since June, 1879, has been the owner and in posession of and engaged in operating the lines of railroad hereinafter mentioned.

II. That the said company owns in fee, and did
38 prior to the levy and assessment of the taxes covered by this proceeding, the several tracts of land, and each and all of them set up and described in the defendant's answer. And that said lands are no part of the congressional land grants to the State of Minnesota, but were purchased during the year 1882 from private parties by J. J. Hill, and by him deeded to defendant during the year 1882, and have been held and owned by the defendant in fee from the date of said purchase.

III. That the Minnesota & Pacific Railroad Com-
39 pany was created a corporation by an act of the Legislative Assembly of the territory of Minnesota, approved May 22, 1857, entitled "An act of Congress to execute the trust created by an act of Congress entitled 'An act making a grant of land to the territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting lands in alternate sections to the State of Alabama, to aid in the construction of a certain railroad in said State,' and granting certain lands to railroad companies therein named."

IV. That by said act of May 22, 1857, it was pro- 40
vided (in the eighteenth section thereof) as follows in regard to said Minnesota & Pacific Railroad Company: "The said company shall and will, on or before the 1st day of March in each year, pay into the treasury of the territory or future state three per centum of the gross earnings of said railroad company for the year ending on the last day of the preceding December, in lieu of all taxes and assessments whatsoever." And in and by said section it was further provided as fol-
lows: "And for securing to the territory or state the 41
payment of the aforesaid per centum, it is hereby declared that the state shall have a lien upon the railroads of said company, and upon all other property, estate and effects of said company, whether real, personal or mixed; and the lien hereby secured shall take and have precedence of all demands, decrees and judgments against said company." That in and by said section it was further provided as follows: "And in consideration of the said annual payments the said company shall be forever exempt from all taxes and assessments 42
whatever by the territory, or state which shall succeed the territory, or by any county, town, city, village or other municipal organization in the Territory or State. And all stocks of the Minnesota & Pacific Railroad Company, whether belonging to said company or individuals, and upon all franchises or estate, real, personal or mixed, held by said company; and said lands granted by said act of Congress hereby authorized to be conveyed to the said Minnesota & Pacific Railroad Company shall be exempt from all taxation until sold and 43
conveyed by said company." And by said act of May 22, 1857, there was granted to the said Minnesota & Pacific Railroad Company all of the interests of the Territory and State of Minuesota in the lands granted to said Territory to aid in the construction of said lines of railroad by the act of Congress mentioned in the title of said act, and which act of Congress was approved March 3, 1857.

V. That thereafter, all and singular the rights, privleges, franchises, lands, property and interests of said

Minnesota & Pacific Railroad Company became and were vested in the State of Minnesota, and were, by a public law of said State of Minnesota entitled, "An act to facilitate the construction of the Minnesota & Pacific Railroad Company, and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, granted by said State to the St. Paul & Pacific Railroad Company.

VI. That by purchase thereof at mortgage foreclosure sales in May and June, 1879, the defendant became and still is the owner in fee of all that part of the lines of railroad of the Minnesota & Pacific Railroad Company, extending from St. Paul, in the county of Ramsey, to St. Vincent, in the county of Kittson, in said State of Minnesota, and of the land granted to aid in the construction of the said St. Vincent extension, in all respects as alleged in the defendant's answer in this proceeding; and of all the property, rights, franchises, immunities, exemptions and privileges at any time possessed by said companies or either of them, including the exemption from ordinary taxation hereinbefore mentioned pertaining to said companies' lines of railroad and granted lands; which said purchase by said defendant, and its right and title to all of said lines of railroad, property, rights, franchises, immunities, exemptions and privileges, were fully confirmed to said defendant in all respects as alleged in said answer.

VII. That the said defendant accepted the provisions of said act relating to taxation, and thereby the same became and ever has been obligatory upon the State and the said companies, as alleged in said answer. And that the said land law and the contract therein expressed has never been altered, repealed or rescinded, but still remains in full force, and that the said companies and the said defendant have always complied with the provisions thereof on their part, as alleged in said answer.

VIII. That the said lands, as to which said answer is herein interposed, are the same lands which are particularly described in said answer, and were all purchased by said defendant on account of their being

valuable timber lands, as alleged in said answer; and 48
said defendant has proceeded, with due diligence, to convert the timber growing on said land, into bridges and tie timber, for the use of its road, as therein alleged.

IX. That the taxes to enforce the payment of which this action is brought, remain delinquent and unpaid.

CONCLUSIONS OF LAW.

I. That the lands described in the answer in this proceeding are not exempt from taxation, but are sub- 49
ject to the taxes levied and assessed thereon and are now delinquent and unpaid, and to enforce the collection of which this proceeding was brought.

II. That the plaintiff is entitled to judgment against the defendant, as provided by law, for the collection of such taxes, and the interest and penalties thereon, together with the costs of this proceeding. And judgment is hereby ordered accordingly.

Dated August 30, 1887.

L. W. COLLINS, 50
L. L. BAXTER,
Judges.

MEMORANDA.

The defendant claims that under the provisions of its charter all of its property of every kind and descrip- 51
tion is exempt from taxation except the payment of a certain per centum of its gross earnings, which it is in said charter provided shall be received by the state in lieu of all other taxation.

The charter referred to provides that the defendant company shall pay annually to the state three per centum of its gross earnings; and that in consideration of such payment it shall be forever exempt from all taxes and assessments upon its stocks, upon its lands received from the general government to aid in the construction

of its roads, and *upon all its franchises or estate, real, personal or mixed, held by said company.* The language of this statute will not bear the construction which the defendant asks to have placed upon it, when considered in connection with the subject to which it relates. The defendant's counsel in his argument correctly says that in considering a statute or contract the court should, for the purpose of construction, place itself in the position of the party at the time the contract was made or the statute enacted, and to give it a construction in the light of surrounding circumstances.

Under what circumstance was this statute enacted — this contract entered into? The Minnesota & Pacific Railroad Company, under the charter of which the defendant claims all of its rights, privileges and exemptions, was in 1857 (at the time of the enactment of the statute referred to) the owner of stocks, and prospectively of lands granted by the general government to aid in the construction of its roads. And this property, together with its franchises granted by the statute, was all the defendant had at the time named. And it was in the light of these surrounding circumstances that the Legislature said to the railroad company that in consideration of the payment by it of three per centum of its gross earnings the state would exempt it from all other taxation upon its stocks, upon the land granted by the government und upon its franchises and estate, real and personal, held by it. What estate was there here referred to and intended by the Legislature to be exempt? Was it such property, real and personal, as the company must necessarily possess itself of to enable it to build and operate its road, or such as it might see fit to acquire for its convenience simply, and for its speculative purposes? The answer to that question seems to us plain. The very language of the statute shows that only such property as was necessary for the company, to enable it to build and operate its road, was intended to be exempt from the operation of the general tax law. If the Legislature had intended what the defendant claims, then certainly it would not

have specially provided for the exemption from taxation of its stocks and the land granted to it as aforesaid; for, if it was intended by said statute to exempt all of the property of the company—real, personal and mixed—from taxation, it would be superfluous to mention any particular part of it, as was done in this case. The defendant claims that because the land was purchased by the company for the timber thereon fit for ties and railroad purposes, that therefore the land is exempt from taxation—we are unable to see upon what principle this claim is made. The land in question was, when purchased by the defendant, covered with timber, which made it profitable for the defendant to purchase it. The company could thus get timber for railroad purposes cheaper than in any other way (there is no claim that it could not have been otherwise and elsewhere obtained), therefore the land, while in the hands of the defendant, should be exempt. This is really the position of the defendant, and if it is a correct one then so long as the defendant sees fit to leave such timber, or any part thereof, standing and growing upon said land, it will be exempt from taxation. It seems to us, therefore, that said lands are taxable; and that only such property, real and personal, as the defendant may acquire for permanent railroad use, and which is necessary to enable it to construct, maintain and operate its road, is exempt from taxation under the provisions of the statute upon which the defendant bases his right to exemption in this case. Any other rule would enable the defendant to secure unlimited quantities of timber land in any part of the state, however distant from the line of its road, and hold it for speculative purposes. The Legislature never intended to give the railroad company such great and exclusive privileges; and there is nothing in the statute referred to to show any such purpose. No property of the defendant is absolutely exempt from taxation, except the land acquired from the government, but the effect of the statute is to tax certain railroad property in a manner different from that in which other property in the state is taxed; that is by requiring the pay-

60 ment annually of three per cent. of the gross earnings of the property executed and exempted from taxation under the general laws of the state; and this property is such only as is used for necessary railroad purposes — not property held, as in this case, for commerce and speculative purposes. No return of the earnings or profits arising from the use or sale of the lands in question is made or by law required to be made by the railroad company, and such earnings, therefore, unless such land is taxable under the general laws of the state,
61 it remains absolutely free from taxation in every shape so long as the company sees fit to hold it for ties and timber; even a territorial Legislature should not be charged with any such intentional injustice to the taxpayers of the state.

L. L. BAXTER,
L. W. COLLINS,

Witness my hand this twenty-seventh day of September, 1887.

62 L. W. COLLINS,
Judge.

[TITLE OF CASE.]

It is hereby stipulated by and between the parties hereto, that the statement of the court made as for a return upon appeal in the above entitled proceeding, may be amended by adding thereto the stipulation here annexed, marked Exhibit "A."

Further, that it appears from the evidence, and the same was uncontroverted, that there were 35,000 acres
63 of land in the tract in question, and that there could be picked out of the entire tract at the time of its purchase by respondent, nine forty-acre tracts that had no timber on suitable for ties and construction material for railroads. The nine forties were interspersed through the 35,000 acres. The respondent owned as a part of said tract that portion of Sec. 27, T. 131, R. 34, described in the answer herein. A part of the S. E. ¼ of S. W. ¼ of said section 27, included in defendant's answer, was platted as the town site of Clarissa in 1879. Part of said lots are now held by the respondent.

That upon said section at the time of the purchase 64
by the respondent, there were two hundred acres of timber fit for railroad purposes. No timber was cut upon any said tract by respondent prior to October, 1885. The bulk of it was cut in 1886, and the balance was being cut at the time of the trial. The timber was cut into plank, boards, ties, and lumber of all kinds. About one-third of the timber so cut was used in constructing and repairing the railroad of the respondent in the territory of Dakota, which railroad was constructed pursuant to the provisions of chapter 273, of 65
the civil code of that Territory. That the balance of said timber and lumber was used in the repairing and constructing respondent's railroad in Minnesota. In some places where the timber had been removed, grass was growing. A few tons of hay cut from said grass was sold, by the agent of respondent having charge of said tract of land, and the proceeds of the sale, amounting to no more than one hundred dollars, were applied by him in partial payment for his services.

MOSES E. CLAPP, 66
Attorney General.

W. E. SMITH,
Attorney for Defendant.

EXHIBIT "A."

STATE OF MINNESOTA, } DISTRICT COURT,
County of Todd. } Seventh Judical District.

67

Stipulation of parties in the matter of the proceedings to inforce payment of taxes on real estate remaining delinquent on the first Monday in January, 1886, for the County of Todd, State of Minnesota, contested by the St. Paul, Minneapolis & Manitoba Railway Company.

For the purposes of the trial, and of the answer and objections and defense of the St. Paul, Minneapolis & Manitoba Railway Company, and the taxes sought to

68 be enforced against the several pieces or parcel of land set out and covered by the answer of said company herein, it is hereby stipulated that the following may be considered as facts, viz.:

The St. Paul, Minneapolis & Manitoba Railway Company is a corporation duly organized under an act entitled "An act to amend title 1 of chapter 34 of the general statutes of Minnesota relating to corporations, being chapter 30 of the General Laws of 1876, and the acts amendatory therof."

69 And said railway company is, and at all times since June, 1879, has been, and now is, the owner and in possession of and engaged in operation of the lines of railroad hereinafter mentioned.

That said company owns in fee, and did prior to the levy and assessment of the taxes covered by this proceeding, the several tracts of land, and each and all of them, set up in the defendants answer.

That said lands are no part of the congressional land grants to the state of Minnesota, but were pur-
70 chased by J. J. Hill during the year 1882 from private parties, and by him deeded to defendant during the year 1882, and have been held and owned by the defendant in fee from the date of said purchase.

That the St. Paul & Pacific Railroad Company executed a mortgage June 2, 1862, upon the branch line from St. Paul to Watab, which is marked Exhibit 1.

That the said St. Paul & Pacific Railroad Company executed a mortgage June 2, 1862, upon its said branch line and six sections in width of the land grant per-
71 taining to such branch, which is marked Exhibit 2,

That the first division of the St. Paul & Pacific Railroad Company executed a mortgage October 1, 1865, upon said branch line from St. Paul to Watab and the entire land grant pertaining to that part of its line, which is marked Exhibit 3.

That said first division company executed a mortgage dated March 1, 1864, covering the railroad only from St. Anthony toward Big Stone Lake, distant about 150 miles, which is marked Exhibit 4.

That said first division company executed a mort-

gage dated March 1, 1864, covering the railroad from 72
St. Anthony to Big Stone Lake and its land grant six sections per mile, which is marked Exhibit 5.

That said first division company executed a mortgage dated July 1, 1868, covering its railroad from St. Anthony to Breckenridge, 216 miles, and all of its land grant between St. Anthony and Breckenridge, which is marked Exhibit 6.

That the St. Paul & Pacific Railroad Company executed a mortgage dated April 1, 1871, covering its lines of road from St. Cloud to St. Vincent and from 73
Watab to Brainerd, and the entire land grant pertaining to these lines, which is marked Exhibit 7.

That mortgage No. 3 was duly foreclosed in the district court, Ramsey county, Minn., and J. S. Barnes, in trust for himself and others, became the purchaser under the decree of foreclosure (marked Exhibit 8).

That shortly after such purchase said J. S. Barnes and the other parties for whom the same was purchased in trust, organized in due form and adopted the corporate name of St. Paul, Minneapolis & Manitoba 74
Railway Company, as hereinbefore stated.

That mortgages Nos. 2, 5 and 6 were subsequently foreclosed by separate actions in one of the district courts of the state of Minnesota, and mortgage No. 7 was duly foreclosed in the United States circuit court for the District of Minnesota. And that upon sales under the decrees in each of said foreclosure actions, the said St. Paul, Minneapolis & Manitoba Railway Company became the purchaser and acquired all the rights under said decrees (marked Exhibits 9, 10 and 75
11) which by law passed by said foreclosure, which said purchase was subsequently duly confirmed.

That the Minnesota & Pacific Railroad Company was created a corporation by an act of the Legislative Assembly of the territory of Minnesota, approved May 22, 1857, entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the territory of Minnesota, in alternate sections, to aid in the construction of certain railroads in said Territory, and granting public lands in alternate

76 sections to the state of Alabama to aid in the construction of a certain railroad in said State,' and granting certain lands to the railroad companies therein named," and by the same act the said company was empowered to construct the lines of railroad therein named, and which main and branch lines and the St. Vincent extension line of the St. Paul & Pacific Railroad Company have always been a portion.

That by said act of May 22, 1857, there was granted to said Minnesota and Pacific Railroad Company all
77 the interests of the territory and state of Minnesota in the lands granted to said Territory to aid in the construction of said lines by the act of Congress mentioned in the title of said act, and which act of Congress was approved March 3, 1857.

That in and by said act of May 22, 1857, was provided in the eighteenth section therof as follows, in regard to said Minnesota & Pacific Railroad Company; "The said Company shall and will, on or before the first day of March in each year, pay into the treasury
78 of the territory or future state three per centum of the gross earnings of the said railroad company for the year ending on the last day of the preceding December, in lieu of all taxes and assessments whatever."

And in and by said section it was further provided as follows: "And for securing to the territory or state the payment of the aforesaid per centum, it is hereby declared that the state shall have a lien upon the railroads of the said company, and upon all other property, estate and effects of the said company, whether real,
79 personal or mixed; and the lien hereby secured shall take and have precedence of all demands, decrees and judgments against said company."

In and by said section it was further provided as follows: "And in consideration of said annual payments, the said company shall be forever exempt from all taxes and assessments whatever by the territory, or state which shall succeed the territory, or by any county, city, town, village or other municipal organization in the territory or state, and all stock of the Minnesota & Pacific Railroad Company, whether belonging

to said company or individuals, and upon all its franchises or estate, real, personal or mixed, held by said company, and said lands granted by said act of Congress hereby authorized to be conveyed to the said Minnesota & Pacific Railroad Company, shall be exempt from all taxation until sold and conveyed by said company." 80

That therefore all and singular, the rights, privileges, franchises, lands, property and interest of said Minnesota & Pacific Railroad Company became and were vested in the State of Minnesota, and were by a public law of the state, entitled "An act to facilitate the construction of the Minnesota & Pacific Railroad Company and to amend and continue the act of corporation relating thereto," approved March 10, 1862, granted by said State to the St. Paul & Pacific Railroad Company, one of the mortgagors above named. 81

That in the year 1864, by proceedings duly had pursuant to the provisions of a public law of this State entitled "An act to amend the charter of the St. Paul & Pacific Railroad Company," approved February 6, 1864, the said first division of the St. Paul & Pacific Railroad Company was duly organized as a corporation, which said organization of said first division of the St. Paul & Pacific Railroad Company was duly confirmed by public law of this State, approved February 1, 1866, entitled "An act to legalize and confirm the organization, acts and proceedings of the first division of the St. Paul & Pacific Railroad Company, and in relation to the charter and powers of said company." 82

That said company and this defendant have at all times fully complied with the requirements of the law in respect to the gross earnings, and the payment of the tax of three per centum. 83

W. E. SMITH,
General Solicitor for Defendant.
E. B. WOOD,
County Attorney of Todd County, Minn.

84 STATE OF MINNESOTA, SUPREME COURT,
OCTOBER TERM, A. D., 1887.

THE COUNTY OF TODD,
Respondent.

vs.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY,
85 *Appellant.*

SYLLABUS.

The charter of a railroad corporation provided for the payment to the State of a stated percentage of its gross earnings, in lieu of all taxes and assessments, and that in consideration of such payment the company should be forever exempt from all assessments and taxes whatever upon its stock, franchises or estate,
86 real, personal or mixed.

Held. That such exemption was not applicable to large tracts of timber land purchased by the corporation, from which to take timber to be converted into ties and lumber for the uses of the corporation.

DECISION.

This railway corporation in 1882, purchased 35,000 acres of land in Todd county, which, excepting an inconsiderable portion, was timbered land. The question
87 to be determined is as to whether these lands are exempt from ordinary taxation.

The lands were purchased on account of their being valuable timber lands. Since 1885 the corporation has been engaged in cutting the timber and converting it into boards, planks, ties, and lumber of all kinds. The greater part of this has been used in constructing and repairing the railroad of this corporation in this State; the remainder (about one-third) has been used for a like purpose upon that part of the road which is in the Territory of Dakota. In some places where the tim-

ber has been cut grass has grown up, a small quantity 88
of which has been sold. Upon a part of one tract a townsite had been platted before this land was purchased by the corporation, and a part of the lots are now owned by it.

This corporation became the owner of a part of the line of the Minnesota & Pacific Railroad Company, and as to its line of road, succeeded to the rights, franchises and immunities of that company, including its exemption from ordinary taxation. As to this no question is raised; nor that the charter of the Minnesota & Pacific 89
Company is to be referred to as defining the exemption to which the St. Paul, Minneapolis & Manitoba Company is entitled.

By section 1 of this charter (*Ch. 1, L. 1857, Extra session*) corporate powers were granted including the right to acquire by purchase or otherwise, and to hold, convey, sell and lease, property and estate, either real or personal or mixed. Section 2 empowered the corporation to locate, construct and operate a railroad. Section 3 authorized the appropriation, by virtue of the 90
right of eminent domain, of a belt of land not exceeding two hundred feet in width throughout the entire length of the road, and to take property even beyond that limit for certain necessary purposes. Section 16 regranted to the corporation the lands granted to the territory by act of Congress. Section 18 provided for the annual payment to the state of three per cent. of the gross earnings of the railroad "in lieu of all taxes and assessments whatever," and that "in consideration of such annual payments the said company shall be for- 91
ever exempt from all assessments and taxes whatever * * * upon all stock in the said Minnesota and Pacific Railroad Company whether belonging to said company or to individuals, and upon all its franchises or estate, real, personal, or mixed, held by said company, and said land granted by said act of Congress * * shall be exempt from all taxation till sold and conveyed by said company." Section 20 declared that the company should be "capable in law of taking and holding any lands granted by the Government of

92 the United States, or of this Territory, or of the future state, or by other parties, which shall be conveyed to it by this act or by deed, gift or purchase, or by operation of law, and may mortgage, pledge, sell and convey the same * * *."

It is a familiar rule, declared and applied in almost all of the cases involving questions like that under consideration, that "statues imposing restrictions upon the taxing power of a state, except so far as they tend to secure uniformity and equality of assessment, are to be
93 strictly construed." This is the language of the Supreme Court of the United States in Bank vs. Tennessee, hereafter referred to. (*104 US 493.*)

In county of Ramsey vs. Chicago, Milwaukee & St. Paul Railway Company, 33 Minnesota, 537 we had occasion to construe a similar statute. A statutory exemption of "the railroad, its appurtenances and appendages, and all other property, estate and effects of said
8 corporation, held or used for, in or about the construction, equipment, renewal, repairing, maintaining or
94 operating its railroads, including the land granted to said company to aid in the construction of said railroad, as also the stock and capital of said company," was considered applicable only to such lands (apart from the land grant) as were held and appropiated to the proper purposes of the corporation in its business of constructing and operating a railroad. It has been considered that the purpose of such statutes has been,
87 not to exempt property from taxation, but to provide a substituted method of securing to the state its proper
95 revenue from the taxable property of these corporations.

City of St. Paul vs. St. Paul & Sioux City Railway Company, 23 Minnesota 469. County of Hennepin vs. St. Paul, Minneapolis & Manitoba Railway Company, 33 Minnesota, 534, 535. Ramsey County vs. Chicago, Milwaukee & St. Paul Railwa Company supra, and the exemption of taxable property from direct taxation is based upon the assumption that such property will be held and used for the purpose for which the corporation was created and through such use yield to the corporation an income, and to the state a percentage of the same in

lieu of direct taxation. We think that the decision in the 96
case last cited, and the reasoning upon which it is based, are applicable here to exclude the land in question, from the operation of the exemption clause above recited. The language of the statute, it is true, is sufficiently comprehensive to include all property, for whatever purpose it may have been acquired and held; but that it is to be read and construed in view of the purposes for which the corporation was created. This was the construction and operating of a railroad; and the whole act relates to this purpose. As to the land grant which 97
was conferred upon the corporation to aid in the construction of the road, its privileges were peculiar. It was not expected that the great body of such lands would be occupied or used directly for railroad construction or railroad business, and the purposes for which the grant was made contemplated that the same might be held and disposed of for speculation and gain; and as to such land the exemption was specially and particularly declared. But apart from the special purposes for which this grant of land was made, 98
and the special provisions relating to it, there is nothing in the charter extending the general scope of the powers of this company beyond the bounds which ordinarily limit the power and privileges of railroad corporations. Although it might be for the profit and benefit of the company to purchase land merely for speculation or to engage in manufacturing for profit, or in banking, it was not empowered to engage in such enterprises; and if it were to acquire and use land for such purposes, such property would not be employed in the 99
manner contemplated by the statute in question, and would not come within the exemption there declared.

No very precise rule can be laid down by which it can be determined, in all cases, whether land acquired for railroad purposes is or is not within such exemption. The mere fact that it was acquired and used for purposes connected with the road, would not necessarily determine its exemption. Many branches of industry might be made serviceable in connection with the operations of a railroad, and property to be devoted to

100 various uses, which could hardly be supposed to have been contemplated, when the corporation was created, as being within the scope of its powers. Such might be the case with respect to the purchase and working of iron mines, forges and rolling mills; the erecting of residences for the use of its officers and employees under ordinary circumstances; the building up of towns along the route to affect the location of centers of population and business, and thus to promote the business and the interests of the company. Even though the state were
101 not to interfere with a corporation engaged in such enterprises, the property thus invested and used would not be within the purposes or the scope of this statutory exemption. Neither, on the other hand, should the operations of the coporation be limited to those things which, in the strictest sense of the word, are *necessary* for the bare construction and operation of a railroad. In the absence of peculiar language controlling the effect of a charter, such corporation is impliedly authorized to prosecute its business in the usual and
102 ordinary way in which such common enterprises are carried on. They may do that which is reasonably necessary for the accomplishment of the authorized undertaking; but it is not contemplated that extraordinary and unusual powers shall be exercised.

The purchase of the lands in question could not, we think, be deemed, in any proper sense of the word, necessary for the prosecution of this enterprise, nor was it such an ordinary appropriation of property to the purposes of the railroad as to come within the
103 reason and scope of the exemption. Such a purchase and use is no more within the contemplated means of accomplishing the purposes of the incorporation, and no more properly incident thereto, than would be the purchase of an iron mine and the erection and operation of works for converting the ore into iron, rails and machinery. If there is any limit to the exemption and as to this there can be no question under the authorities this property was unquestionably, in our opinion, beyond the scope of the exemption. It may be stated as a general proposition, that such real estate

of a corporation as is not *itself* devoted to use for rail- 104
road purposes, is not within such exemption, even
though the *product* of the road be so used. Whether
any real property which the corporation could not
acquire by condemnation under the law of eminent
domain (and it could not have so acquired this land)
would be exempt from ordinary taxation, we need not
decide.

In addition to authorities cited in *County of Ramsey*
vs. C. M. & St. P. Ry. Co. supra, we refer to some others,
going to sustain the view we have taken of this case. 105

In the matter of Seigert, 119 Ill., 83, the Supreme Court
of that State lately considered the question of the tax-
ability for other than State purposes of a grain elevator
built upon the lands of a railroad corporation, and
owned by it, but leased to other parties. The elevator
facilitated the operations of the railroad in the ship-
ment of grain. The charter of the company exempted
from taxation certain granted lands, and also, for a
period of six years, the "stock, property and effects of
the company", and thereafter the "stock, property and 106
assets" belonging to the company were to be taxed to
a limited extent for state purposes. The corporation
was "exempted from all taxation of every kind, except
as herein provided for." It was considered that
although the language of the statute was sufficient to
include the property in question within the exemption,
yet that it was not the purpose of the legislature to
exempt such property so held; it being not necessary
for the construction and operation of the road.

107

See also Ill. Cent. R. R. Co. v. Irvin, 72 Ill., 452.

In *Bank v. Tennessee, 104, U. S. 493*, a banking cor-
poration was empowered to purchase and hold a lot of
ground for the use of the institution as a place of busi-
ness, and at pleasure sell and exchange the same; and
may hold such real or personal property and estate as
may be conveyed to it to secure debts due the institu-
tion, and may sell and convey the same." The charter
further declared that the institution "should pay to the
state an annual tax of one-half of one per cent. on each

share of capital stock, which shall be in lieu of all other taxes." The bank purchased with a portion of its capital stock, a lot with a building upon it, a part of which building the bank occupied, and it leased the remainder. As security for certain loans from the bank, a trust deed of certain other lands had been made in its favor. To enforce the security, these lands had been sold under the deed, the bank purchasing and afterwards holding the same for sale. It was held that these lands, and that part of the bank building not occupied by it, were not exempt from taxation. The court declares the rule of strict construction to which we have before referred, and say: "It is to be presumed that the exemption from other than the designated tax was in consideration that the capital would be employed for its legitimate purposes. * * * In our judgment, the limited exemption can not be extended to property used beyond the actual wants of the corporation, in carrying out the purposes of its creation." The Court cite with approval, among other cases, *State vs. Commissioners of Mansfield*, 23 N. J. L., 510, in which, under a charter authorizing generally, a railroad company to purchase and hold real estate, it was held that lands acquired by the company and occupied by dwelling houses which it let to its employes was not exempt. In the later case of State vs. Hancock, 35 N. J. L., 537, the sharp contrast which is made prominent in the opinion in State vs. Mansfield, as a test of taxability, between what is strictly necessary and what is convenient for the purposes of the corporation, is disapproved; but the decision in the latter case is not opposed to our view of the law.

See further *Vermont Central R. R. Co. vs. Burlington*, 28 Vt., 193. *Inhabitants of Worcester vs. Western R. R. Co.*, 4 Mc., 504. *Mil. & St. Paul Ry. Co. vs. City of Milwaukee*, 34 Wis., 274.

Order affirmed.

DICKINSON, J.

In the Supreme Court

OF THE

United States.

October Term, 1891. No. 132.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY.

Plaintiff in Error.

vs.

COUNTY OF TODD, IN THE STATE OF MINNESOTA,

Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

MOSES E. CLAPP,
Counsel for Defendant in Error.

In the Supreme Court

OF THE

United States.

COUNTY OF TODD,

Defendant in Error.

vs.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILROAD COMPANY,

Plaintiff in Error.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF CASE.

These proceedings grow out of an attempt on the part of the plaintiff in error to resist the collection of taxes upon certain lands in the state of Minnesota owned by the plaintiff in error. The lands in question were purchased by the plaintiff in error and claimed to be exempt from taxation under the laws of the state of Minnesota. The exemption is claimed under and by virtue of the charter granted the plaintiff in error by the state of Minnesota, and without detailing the history of the legislation and judicial proceedings which finally resulted in the organization of the plaintiff in error as a corporation, it is sufficient to say that by its charter the plaintiff in error became possessed of a land grant, and in consideration of the annual payment of a certain percentage of its earnings, it is granted an exemption from taxation as follows:

"And in consideration of such annual payments the said company shall be forever exempt from all assessments and taxes whatever by the territory, or state which shall succeed the territory, or by any county, city, town, village or other municipal authority in the territory or state, upon all stock, whether belonging to said company or to individuals, and upon all its franchises or estate, real, personal or mixed, held by said company, and the land granted to said company by an Act of Congress, and authorized to be conveyed to said company shall be exempt from all taxation until sold and conveyed by said company."

The land in question is no part of the land grant of the plaintiff in error, but was purchased by the plaintiff in error in 1882 for the purpose, as claimed, of securing land from which to obtain ties and timber to be used in the construction of its railroad.

It is conceded for the purpose of this case that the company at all times have paid the per centum tax contemplated by their charter.

Upon the trial of this case in the District Court it was held, construing the exemption claimed by defendant in error, that the lands in question did not fall within the terms of the charter contract. This view was adopted by the Supreme Court of Minnesota upon appeal.

County of Todd vs. St. P., M. & M. Ry. Co., 38 Minn. 163.

It will be seen from the foregoing statement that the only issue passed upon in this case was whether or not the exemption from taxation found in the charter of the railroad company applies to the land in question.

The Supreme Court of Minnesota held that where "The charter of a railroad corporation provided for the payment to the State of a stated percentage of its gross earnings, in lieu of all taxes and assessments, and that in consideration of such payment the company should be forever exempt from all assessments and taxes whatever upon its stock, franchises or estate, real, personal or mixed; that such exemption was not applicable to large tracts of timber land purchased by the corporation, from which to take timber to be converted into ties and lumber for the use of the corporation."

It was insisted upon by the plaintiff in error that the charter was a contract; that by its terms all the property of the com-

pany was exempt; on the other hand the defendant in error insisted that the contract could not be so construed as to exempt the lands from taxation.

NO FEDERAL QUESTION IS PRESENTED.

It cannot be claimed that the State Court could base its decision upon any subsequent statute which the defendant in error might claim rendered the lands taxable. The following extracts from the statutes and constitution of Minnesota show that all property, not by law exempt, was taxable and that the power to tax such property existed long before the plaintiff in error received its charter:

Section one of chapter 12, of the revised statutes of the Territory of Minnesota, for the year 1851, reads as follows:

"Section 1. All property real and personal, within the Territory not expressly exempted therefrom, shall be subject to taxation in the manner provided by law."

"Sec. 7. The real estate of incorporated companies, liable to taxation, shall be assessed in the district in which the same shall lie, in the same manner as the real estate of individuals."

Section two of the Schedule of the State Constitution of the State of Minnesota, adopted upon the organization of the State in 1857, reads as follows:

"Sec. 2. All laws now in force in the Territory of Minnesota not repugnant to this Constitution, shall remain in force until they expire by their own limitation, or are altered or repealed by the legislature."

The act of 1851 has been from time to time modified, but only in minor matters affecting the mode of procedure; consequently if not exempt, the lands were as a matter of course taxable. The very attempt to secure an exemption in the charter implied that the property of the company was taxable, except as exempted.

It is difficult to see how it can be claimed that the effect of the decision is to impair the obligation of a contract. Had the State sought to tax the lands under any law passed subsequent to the date of the company's charter, under a claim that such subsequent law rendered the lands taxable, it could have been urged that the obligation of a contract was impaired, but the State claimed that under the terms of the contract itself the lands were taxable.

The case in all its history has gone upon the theory that the lands were of course taxable, if not exempt, and the real question has been: Does the exemption found in the companys' charter embrace the lands in question? This is the only question that has been raised by the parties to the record, and the only question construed or passed upon by the Supreme Court of Minnesota. If the lands were, at the time the charter was granted, subject to taxation as not within the exemption, a subsequent law merely modifying the tax procedure could not be said to impair the obligation of the contract, and that is the most that can be claimed for the subsequent legislation in this case. In order to give this Court jurisdiction, it must appear that the obligation of a contract has been impaired by a legislative enactment.

> *New Orleans Waterworks Company vs. Louisiana Sugar Ref. Co., 125 U. S. 18.*

In that case the Court cites with approval the language found in *Railroad Company vs. Rock, 4 Wall. 177*: "We are not authorized to review the judgments of State Courts, because their judgments refuse to give effect to valid contracts, or because those judgments in their effect impair the obligation of contracts; if we did, any case decided by a State Court could be brought here where the party setting up a contract alleged that the Court had taken a different view of its obligation to that which he held," citing *Knox vs. Exchange Bank, 12 Wall. 379.*

The latter case was one where the contract was a statutory or charter contract.

Further, such question must appear by the record to have been involved.

> *New Orleans Waterworks Company vs. Louisiana Sugar Ref. Co., supra.*

We insist that outside of the certificate in this case no suggestion appears that any law of Minnesota involving any violation of contract rights has been called in question.

Again, if the decision of the Supreme Court of the State can be sustained upon any grounds other than the upholding of a subsequent statute which, if given force, impairs the obligation of a contract, it will be upheld. In the case at bar the State Court went no further than to construe the original contract

itself. The case at bar is clearly distinguishable from the case of *Yazoo Railroad Co. vs. Thomas*, 132 U. S. 174, and comes within the rule laid down in *New Orleans Waterworks Company vs. Louisiana Sugar Ref. Co., supra*. The later case is a full review of the subject pointing out the distinction between the rule therein laid down and that laid down in *Yazoo Railroad Co. vs. Thomas, supra*, and containing as it does a complete citation of the numerous decisions of this Court upon the question, renders further citation by us unnecessary.

THE LANDS IN QUESTION, EVEN BY THE TERMS OF THE COMPANY'S CHARTER, ARE NOT EXEMPT.

It is true the exemption was a broad one, but in construing the statute under consideration it should be viewed in the light of surrounding circumstances. Words ordinarily possessing a plain meaning must be construed with reference to their use. Did the Legislature, in granting the exemption to appellant, intend that any property thereafter acquired by the appellant should be exempt from taxation or that the percentum tax paid by the company should be in lieu of taxes upon such property? It is an elementary rule of construction that while particularization gives force to the statute, it at the same time limits its scope. In order to avoid any question the Legislature provided that the stock of the road whether belonging to the company or to individuals and its franchises or estate, real, personal and mixed, held by said company, and the lands granted by Congress should be exempt from taxation, and this must be limited in its effect to its plain import as gathered from the language itself construed in the light of the law. As we have said, words, ordinarily having a single, plain definition, must nevertheless be construed with reference to their use when applied to the subject under consideration. Now, when the Legislature says that all the property of a railroad corporation shall be exempt, what does it mean? If it means every species of property of which the railroad company under an extraordinary charter may become the owner, then appellant's position is correct. But we insist that it must be limited to mean such property as it might reasonably be presumed the company would need and acquire as necessarily incident to the conduct of its business as a common carrier. That is to say, the language must be interpreted not by the abstract rules

found in the dictionary, but in the light of the law applicable to the subject. In other words, we contend that the statute exempting the property of a railroad company from taxation, no matter how general the language employed, must be limited to property which, being a necessary incident to the operation of a railroad, can be acquired by condemnation proceedings. Counsel for appellant have presented their argument in the form of several distinct propositions, but we contend that it can all be resolved into one proposition and all depends upon the construction to be given the language of the statute. Exemption of the property of railroad companies has been, by construction, limited to property reasonably necessary for its purposes and sometimes to such as are actually used therefor.

Pierce on Railroads, 484.

It is not a question of what property may be convenient for the use of the railroad, but what property is necessary for its use, and the rule by which this is determined, is what property can be taken by the corporation through condemnation proceedings. The Supreme Court of Wisconsin, in the case of the *Milwaukee and St. Paul Railway Company vs. The Board of Supervisors of Crawford County, 29 Wis., p. 116*, held that a hotel or eating house used in connection with the railroad, but partially for other public use, was not exempt under the statute exempting all the property necessarily used in operating the railroad. The same Court in the case of the *Milwaukee and St. Paul Railway Company vs. The City of Milwaukee, 34 Wis., 274*, in construing the same statute, held that certain property, owned by the company, was not exempt. After commenting upon the case of the *Milwaukee Road vs. The Supervisors of Crawford County, 29 Wis.*, and discussing the proposition as to whether the property was not necessarily used in the operation of the road, they place themselves upon the ground that the better test is to treat the exemption as co-extensive with the right to take by condemnation, citing with approval the case of the *New Jersey Railroad and Transportation Company vs. Hancock, 33 N. J. Law, 415*. In fact this is the only reasonable test. Any other test would leave the matter in a chaotic state. The Supreme Court of New Jersey, in the case of *Camden and Amboy Railroad Company vs. Mansfield, 24 N. J., 3 Zab., 540*, after reviewing the question with reference to the test of necessity, determined that the operation of the exemption clause must be limited

where the necessity ends and the mere convenience begins, citing several cases in support of their position, they say: "It is not enough that it is convenient, or that it affords facilities in carrying on the business of the company." Counsel for the appellant contends that upon the review the case of *New Jersey Railroad and Transportation Company, supra*, being reversed by the *Court of Errors, 6 Vroom 533*, such reversal overruled the case of the *State vs. Mansfield*. It is true that the Court of Errors criticizes the language used in the Mansfield case and determines that the word "necessary" is not to be contradistinguished from the word "convenient," but the Court reaffirms the doctrine that not all the property a company may acquire is exempt under a general exemption. In the latter case the Court extended the exemption to a gravel bed purchased by private parties for the repair of the road, and also to a branch road connecting the gravel pits with their line, and yet this case last cited would hardly support the position taken by the appellant.

While they distinguish between what may be necessary and convenient, they carefully limit the convenience to that which is *obviously appropriate* to carry into effect the franchise granted; but, whatever may be said as to the effect of the latter case upon the Mansfield case, and however much the Court of Errors of New Jersey might be prone to criticise the Mansfield decision, the decision of the Supreme Court is cited with approval by the Supreme Court of Wisconsin in *Milwaukee & St. Paul Railway Company vs. City of Milwaukee, supra*, and the Supreme Court of the United States, in the case of *Bank vs. Tennessee, 104 U. S., 14 Otto*, on page 493 say: "The case of the *State vs. Commissioners of Mansfield, 23d New Jersey Law, 510*, decided by the Supreme Court of New Jersey, is a leading one," and cite with approval the language of the Mansfield case and say that the doctrine there established, that is, that the exemption is limited to the necessity, is founded in the wisest reasons of public policy. 'It would lead to infinite mischief if a corporation, simply by investing its funds in property not required for the purpose of its creation, could extend its immunity from taxation and thus escape the common burden of Government. The case of the *Vermont Central Railroad Company vs. The Town of Burlington, 28 Vermont, 193*, also cited with approval in *Bank vs. Tennessee*, holds that the statute exempting the property and effects of the railroad company

from taxation, shall be limited in its application to real estate, to such as the company were authorized to take *in invitum*. The law under which the exemption was claimed, provided, "that the stock, property and effects of the company shall be exempt from all taxes levied by or under authority of the state."

This could not be enlarged any by the use of the word "all," and yet the Court say: "If full effect is given to the language, it would seem to create an exemption co-extensive with their right to hold property in their corporate capacity. That provision, however, should be construed so as to carry into effect the intention of the Legislature. The plaintiffs, by their charter, are made a body corporate with power to construct a railroad for the transportation of persons and property, and are authorized to make the necessary surveys, and to lay out their road not exceeding six rods in width * * *. They may also take and hold such real estate as may be granted or given to them to aid in the construction, maintenance and operation of the road. "The property," the Court say, "so far at least as the company are authorized to take it by proceedings *in invitum*, and the franchise as granted to them, can be used in no other way except for public use." The Court held that the statute does not exempt all the property which the company could acquire, cited with approval the case of the *State vs. the Commissioners of Mansfield, supra*. The Court finally say: "When, therefore, in the charter of this company, the Legislature exempted the stock, property and effects of the company from taxation, reference was had, so far as real estate was concerned, to that which they were authorized to take by proceedings *in invitum* and does not extend to other land which they may take by grant, and which may or may not be a matter of convenience and a source of profit. We contend that the cases cited by plaintiff in error are not in point. The case of *State vs. Hamline University*, decided by the Supreme Court of the State of Minnesota, reported in the *18 Northwestern, on page 111*, turned upon the construction of the charter which exempted all corporate property belonging to the institution. It was insisted that the word "institution" limited the exemption. The Court held otherwise.

The case of the *House of the Friendless vs. Rouse*, 8 *Wall. 430*, can hardly be said to have been a construction of the terms of the exemption itself. The charter contained an exemption, and further provided that the existing State authorities or Legis-

lature, to at any time modify the charter, should not apply to the charter in question. The real question was whether the Legislature could subsequently modify this charter as to the exemption provision. The Court held that it could not; that the charter constituted a contract which could not be affected by subsequent legislation.

The *Washington University vs. Rouse, Id.* 439 involves the same question and was disposed of on the same ground.

Asylum vs. New Orleans, 105 *U. S.* 362, turned entirely upon the question of whether the Legislature, under a general power to dissolve corporations, could effect the dissolution by taxing the property of the corporation. This Court held: "The imposition of the tax in question, contrary to the express terms of the charter and without any provision for compensation, was not a legitimate exercise of the power of dissolution reserved by the code."

Wilmington Railroad vs. Reid, 13 *Wall.* 264, was a case where the charter provided that the property of the company and the shares therein should be exempt from any public charge or tax whatsoever. The Court held that this exception covered the company's franchise. The Court say:

"The taxes imposed are upon the franchise and rolling stock "of the company, and upon lots of land appurtenant to and "forming part of the property of the company, and necessary "to be used in the successful operation of its business. It cer- "tainly requires no argument to show that a railroad corporation "cannot perform the functions for which it was created without "owning rolling stock and a limited quantity of real estate, and "that these are embraced in the general term, property. Prop- "erty is a word of large import, and in its application to this "company included all the real and personal estate required by "it for the successful prosecution of its business. If it had "appeared that the company had acquired either real or per "sonal estate beyond its legitimate wants, it is very clear that "such acquisitions would not be within the protection of the "contract."

If it were not that the case of *Bank vs. Tennessee, supra*, is more pointedly in our favor, we would be content to rest our case upon the decision of the case last cited, keeping in mind the distinction made by the courts between what is necessary in the prosecution of the business of the company, as being devoted to use in the prosecution of such business, and what

may be required to keep the property employed in the prosecution of such business in repair.

Brightman vs. Kirmer, 22 *Wis.* 54, turned upon the question of whether exemption from taxation includes exemption from taxation for local improvements.

Counsel for appellant contends that under appellant's charter they could take property not necessary for the use of the railroad, and that consequently so long as the company does not act *ultra vires* in the acquisition of the property, the property so acquired must be exempt, and devotes some space to the discussion of this proposition. We think it enough to say that there is only one question involved, and that is whether under the terms of the charter the land in question is exempt from taxation, and in construing the charter it must be admitted that there would be a limit somewhere to the exemption. Hence, it follows, although the language of the charter is plain, yet it must be interpreted in view of the purpose for which the corporation was created; that the language employed is the subject of interpretation, under the recognized rules of interpretation, is evidenced from the fact that this and other Courts have constantly placed a judicial construction in effect modifying terms as plain as those employed in the charter in the case at bar; it being, then, a matter of interpretation resting upon legislative intent to be gathered from the surrounding circumstances, any reasonable doubt is to be resolved against the exemption claimed. Carrying the argument of appellant as a legitimate conclusion, it is difficult to imagine any kind of property which the company might not acquire for speculative purposes and hold relieved from the burden of taxation. Here was a tract of land quite generally covered with timber, yet it appears from the evidence that a portion of it consists of government subdivisions which have no timber upon them, which could be held and sold for speculation, not enough to warrant the assumption that they constituted any inducement to the purchase of the land, yet trifling as they are, they show the natural result of the claim of the plaintiff in error. If plaintiff in error could purchase thirty-five thousand acres of land of which nine forties had no timber at all, and hold the tract exempt from taxation, it could if it saw fit, purchase an equal amount of land with only nine forties available for timber, and yet claim the same exemption. If a purchase of thirty-five thousand acres including a few dozen town lots, as it appears

is the fact in the case at bar, could be held exempt, unreasonable as it is to suppose plaintiff in error would engage in it yet, if it saw fit it might with equal propriety purchase the same amount of land of which a similar infinitesimal amount might be available for timber, and the balance consist entirely of available real estate.

Even under the view taken by plaintiff in error the burden of proving what quantity would be reasonable to hold for the purpose claimed would devolve upon the company, and there is no evidence upon this point. Yet the Court is asked to hold that timber lands are necessary in the operation of a railroad and that the company is to be the sole judge as to the quantity necessary to hold.

The true test must be as we contend that the exemption is limited to such property as the company can take *in invitum*, or at the most as is necessarily used in the operation of the road as distinguished from that which may be convenient in maintaining the road in a state or repair.

Railroads use a large quantity of iron, but it would hardly be contended that the plaintiff in error, under its charter, could hold mineral lands exempt from taxation. Again, the plaintiff in error, claiming as it does the exercise of great sagacity in the purchase of this property, might with equal propriety purchase every acre of available timber land in the State and at its convenience use so much as it desired for ties and bridge timber and still hold the entire land exempt from taxation; and yet with only a difference in degree, but none in principle, it is contended that this is the meaning of its charter contract. We insist that the case is clearly within the principle of the decision of *State vs. Commissioners of Mansfield*, 23 *New Jersy Law* 510, approved by this Court in *Bank vs. Tennessee*, *supra*, and respectfully submit that the judgment should be affirmed.

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